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Transcript Exhibit(s)

Docket #(s): RR-20736A-10-0140

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Exhibit #: A1-A8, S1

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Arizona Corporation Commission  
**DOCKETED**

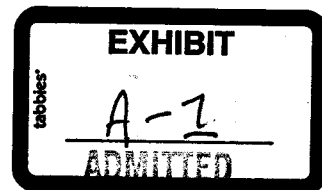
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FENNEMORE CRAIG  
A Professional Corporation  
Patrick J. Black (No. 017141)  
3003 North Central Avenue, Suite 2600  
Phoenix, Arizona 85012  
Telephone (602) 916-5000

Attorneys for Drake Cement, LLC

**BEFORE THE ARIZONA CORPORATION COMMISSION**

IN THE MATTER OF THE APPLICATION  
OF DRAKE CEMENT, LLC TO  
ESTABLISH A NEW RAILROAD  
CROSSING ON YAVAPAI COUNTY  
ROAD 71 NEAR THE CITY OF DRAKE,  
YAVAPAI COUNTY, ARIZONA, DOT  
CROSSING NO. AAR/DOT# 933-885T

DOCKET NO.

**APPLICATION FOR  
ESTABLISHMENT OF NEW PUBLIC  
HIGHWAY-RAIL GRADE  
CROSSING**

**INTRODUCTION**

Drake Cement, LLC ("Drake") hereby submits the above-captioned application to the Arizona Corporation Commission ("Commission"), seeking approval to establish a new public at-grade crossing ("New Crossing") on Yavapai County Road 71 ("CR71") that will result with the construction of an industrial rail spur to serve Drake's cement plant operations near Drake, Arizona. This crossing project is part of an overall plan Drake and Yavapai County ("Yavapai") have to re-align CR71 in order to address traffic issues created by the location of Drake's new cement plant. Approval of this application would authorize the establishment of a new public at-grade crossing where CR 71 intersects with Drake's industrial rail spur. A copy of the agreement between the County and Drake is attached hereto as **Exhibit 1**.<sup>1</sup> Representatives from Drake, Yavapai and the

<sup>1</sup> The agreement will be addressed and voted on by the Yavapai County Board of Supervisors on April 19, 2010.

1 Commission's Office of Railroad Safety conducted an on-site meeting on March 8, 2010.

2 **I. Project Location and Description.**

3 The New Crossing will be located near Drake, Arizona, near State Highway Route  
4 89 (Hwy 89) and CR71. Currently, CR71 is fully paved between Hwy 89 and a BNSF  
5 Railway Company ("BNSF") public at-grade crossing, which includes approximately 1.8  
6 miles of 24-ft wide asphalt pavement. The first 1.25 miles are approximately 30 years  
7 old, and the next 0.55 miles includes new pavement placed by Drake in the Spring of 2008  
8 prior to the start of the Drake cement plant construction. The New Crossing would be  
9 located approximately 0.4 miles after the BNSF crossing where CR 71 intersects Drake's  
10 future industrial spur. Approval of the New Crossing will allow Drake to finish  
11 construction of its industrial spur so that operations can begin at Drake's cement plant. A  
12 diagram of the New Crossing is attached hereto as **Exhibit 2**.

13 **II. Need for the New Crossing.**

14 The New Crossing is needed to enhance public vehicular safety near the Drake  
15 cement plant. Drake has entered into an agreement with BNSF to bring coal to the Drake  
16 site. Coal is needed to fire up the plant's kiln that will convert the necessary raw materials  
17 (e.g. limestone, bauxite, iron ore, etc.) into clinker, which will eventually lead to the  
18 production of cement. Drake has projected the production of approximately 660,000 short  
19 tons of cement annually, and to complete this, it will be necessary to transport  
20 approximately 800 cars of coal per annum, or 15 rail cars per week. Drake has the  
21 capacity of holding 12 railcars at a time within its plant site, meaning that only 2 crossings  
22 will be necessary per week to handle the inbound of raw materials and the outbound of  
23 cement sold.

24 **III. Grade Separation is Not a Viable Alternative.**

25 There were two main considerations taken into account when determining whether  
26 there was a need for grade separation at the New Crossing:

- 1 a) Traffic associated with the crossing, both railroad crossing and vehicular traffic  
2 along the road; and  
3 b) Geometry associated with the crossing, including appropriate sight distances and  
4 warning and regulatory signs.

5 Regarding the first consideration, only two crossings will be made weekly to serve  
6 Drake's cement operations. Also, regarding the geometry associated with the New  
7 Crossing, both the horizontal and vertical alignment need to be considered to account for  
8 appropriate sight distances. The New Crossing itself will be quite flat, with maximum  
9 slopes of 2% towards the crossing. The horizontal sight distance depends greatly on the  
10 crossing angle, which is 70 degrees. Even though this is not the 90 degrees that would be  
11 fully desired, there are additional factors that need to be considered:

- 12 - Along the crossing, no protuberances or structures will interfere with the sight  
13 distances.  
14 - A barbwire fence will be provided between CR71 and Drake's spur line with  
15 directional warning signs to prevent any confusion between the road and the  
16 railroad line. Similarly, south of CR71, barbwire fence already exists that separate  
17 CR71 from the Drake property.

18 Due to physical limitations, it is impossible to construct a grade-separated public  
19 highway-rail crossing without severe impact to Drake's cement operations and  
20 surrounding businesses.

21 **IV. Warning Devices to be Installed.**

22 Due to the reduced number of times that the New Crossing is to be used by Drake,  
23 the following warning and regulatory signs have been recommended by Yavapai and  
24 Commission Staff to enhance public safety:

- 25 a) Railroad Crossing Warning Signs, installed along both directions of CR71 per  
26 MUTCD standards;



- b) Railroad Skewed Warning Signs, indicating the skewed angle, installed along both directions of CR71 per MUTCD standards;
- c) Railroad Crossing signs per MUTCD standards, indicating the USDOT crossing number;
- d) Install two rolling gates with stop signs facing both directions of traffic. This is to be manually placed by Drake railroad operators when the crossing is to be made, and removed immediately after the crossing has been completed.

A visual diagram of the warning devices to be used at the New Crossing is attached hereto as **Exhibit 3**.

## V. Average Daily Traffic Counts, Daily Train Movement, Traffic Reports.

Information and data concerning traffic counts is attached hereto as **Exhibit 4**.

## VI. Crossing Maintenance.

By agreement, Drake will maintain the New Crossing surfaces and any signals and warning devices, while Yavapai will maintain the road approaches, any sidewalks, roadway signs and pavement striping in accordance with MUTCD guidelines.

## VII. Project Costs.

All costs associated with the approval and construction of the New Crossing shall be borne by Drake. The estimated cost of construction is \$228,850, as more fully set forth in **Exhibit 5**, attached hereto and incorporated by reference.

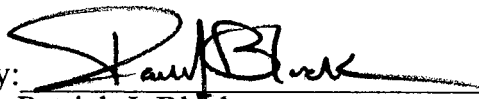
**RELIEF REQUESTED**

Drake respectfully requests that the Commission approve this application to establish a new public at-grade crossing on an expedited basis so that Drake can begin cement operations. The new Drake cement plant is expected to bring jobs and economic development within Yavapai County, and Drake has worked closely with both county engineers and Commission Staff to ensure that the establishment of the New Crossing will not jeopardize the public convenience and safety.

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RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of April, 2010.

FENNEMORE CRAIG, P.C.

By:   
Patrick J. Black  
Attorneys for Drake Cement, LLC

**ORIGINAL** and 13 copies filed  
this 9<sup>th</sup> day of April, 2010 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

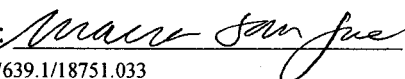
**COPY** hand-delivered  
this 9<sup>th</sup> day of April, 2010 to:

Charles Hains  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Brian Lehman, Chief  
Railroad Safety Section  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

**Copy** sent via mail  
this 9<sup>th</sup> day of April, 2010 to:

Martin Brennan  
Yavapai County Attorney's Office  
2830 N. Commonwealth, Suite 106  
Camp Verde, Arizona 86322

By:   
2277639.1/18751.033

**Application For Establishment  
Of New Public Highway-Rail Grade Crossing**

**EXHIBIT 1**

**YAVAPAI COUNTY**

**PUBLIC WORKS ENGINEERING DEPARTMENT**

**COUNTY IMPROVEMENT PROJECT AGREEMENT**

**for the**

**RE-ALIGNMENT OF A PORTION OF YAVAPAI COUNTY ROAD 71**

**and the**

**ESTABLISHMENT OF TWO PUBLIC HIGHWAY-RAIL GRADE CROSSINGS AND RAIL  
OPERATIONS**

**BY AND BETWEEN**

**YAVAPAI COUNTY**

**AND**

**DRAKE CEMENT, LLC**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, between DRAKE CEMENT, LLC, a Delaware limited liability company ("DRAKE"), and YAVAPAI COUNTY, a political subdivision of the State of Arizona, hereinafter referred to as (the "COUNTY")(each a "Party" and collectively, the "Parties").

**RECITALS:**

- A. DRAKE owns a railroad switchyard and associated railroad tracks ("Drake Yard"), and an industrial spur that, upon completion, will initially solely service a cement plant on certain other Drake owned property (the "Drake Spur" and collectively with the Drake Yard, the "Property"), in the County of Yavapai, Arizona as shown on Exhibit 1.
- B. DRAKE has entered into an Operating Agreement dated January 22, 2010 with DRAKE SWITCHING COMPANY, LLC, an Arizona limited liability company ("Authorized Representative"), attached hereto as Exhibit 2, to operate the tracks and rail car activity on the Drake Property.
- C. DRAKE proposes to relocate an existing at-grade public rail grade crossing (AAR/DOT # 025751N) located at milepost 3 of Yavapai County Road 71 ("CR71") within the Drake Yard at railroad milepost 0000.72 ("**Existing Crossing**"). The relocated crossing will be located near railroad milepost 0000.75 and be assigned the same AAR/DOT# 025751N ("**Relocated Crossing**"). Construction and use of the **Relocated Crossing** will also cause the removal and permanent closure of the **Existing Crossing**. Diagrams of both the **Existing Crossing** and the **Relocated Crossing** are depicted on Exhibit 3.
- D. DRAKE also proposes to establish a new at-grade public crossing located on the Drake Spur at milepost 2 of CR71 ("**New Crossing**"). The **New Crossing** will be located near railroad milepost 0000.50 and will be assigned AAR/DOT# 932867S. A diagram of the proposed **New Crossing** is depicted on Exhibit 4.
- E. The Parties acknowledge that construction of the **Relocated Crossing** and the **New Crossing** and the closure of the **Existing Crossing** are subject to approval by the Arizona Corporation Commission ("**Commission**").
- F. In order to facilitate the construction, operation and maintenance of the **Relocated Crossing** and **New Crossing**, as well as the closure of the **Existing Crossing**, the Parties agree that a realignment of a portion of CR71 (the "**Road Segment**") is required in order to maximize public safety at each of the crossings. The proposed realigned **Road Segment** is shown on Exhibit 5.
- G. The Parties hereto desire to express in writing their understanding and agreement with respect to responsibilities for the construction, operation and maintenance of the **Relocated Crossing** and **New Crossing**, and the permanent closure of the **Existing Crossing** as well as the construction and subsequent dedication of the **Road Segment** (collectively, the "**PROJECT**").

- H. All numbered exhibits are incorporated and made a part of this AGREEMENT by reference and attachment regardless of designation or alphabetical order.

### AGREEMENT

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

### ARTICLE I - DEFINITIONS

- A. AGREEMENT means this specific AGREEMENT with all attached exhibits together with all attachments incorporated by reference.
- B. CROSSINGS, when used in plural form, shall mean the following:
- Existing Crossing** means the existing at-grade public road crossing in the Drake Yard for CR71 located at railroad milepost 0000.72 (AAR/DOT # 025751N). Exhibit 2.
- Relocated Crossing** means a new at-grade public road crossing in the Drake Yard for CR71 located at railroad milepost 0000.75 (AAR/DOT # 025751N). Exhibit 3.
- New Crossing** means a new at-grade public road crossing on the Drake Spur for CR71 at railroad milepost 0000.50 (AAR/DOT # 932867S). Exhibit 4.
- C. PLANS means (i) the final one hundred percent (100%) completed PROJECT plans and specifications affecting and pertaining to the Drake Property. All project plans shall be sealed by an engineer who is registered in the State of Arizona.
- D. PROJECT means all work of every kind and character required in connection with all construction and/or closure (as appropriate) of the realigned Road Segment and the CROSSINGS. The PROJECT includes, but is not limited to, the construction of any and all roadway improvements, installation of railroad safety devices and appurtenances, communication lines, signal and electrical lines and appurtenances, grading, both temporary and permanent drainage facilities, irrigation facilities, signing and striping, modification to utilities, right of way acquisition, preliminary and construction engineering, contract preparation, cuts, fills, highway pavement, retaining walls and all highway facilities at the locations shown on PROJECT PLANS and specifications included herein by reference only.
- E. PROJECT COSTS means the actual fees and costs for the entire PROJECT, which shall be the responsibility of DRAKE.
- F. STAFF means the staff of the Commission's Railroad Safety Division.

- F. WORK means any work to be performed by DRAKE or its contractors or agents, in accordance with the PLANS. WORK shall include engineering, design, management, administration, design, and construction labor, including approved changes in scope.

## ARTICLE II - DRAKE OBLIGATIONS

- A. DRAKE shall, in cooperation with both the COUNTY and STAFF, design all phases of the PROJECT in compliance with all applicable federal, state and local rules and regulations governing the subject matter of this AGREEMENT.
- B. DRAKE shall promptly provide COUNTY and STAFF the opportunity to review and comment on progress copies of the design plans at the 95% completion stages, along with a copy of the final PLAN submittal. Submittal to the COUNTY shall be for purposes of consistency with adopted road design and construction specifications and to STAFF for review of safety issues related to the CROSSINGS. Upon receipt of the final plan submittal, COUNTY shall signify by letter addressed to DRAKE its full approval of the design PLANS.
- C. DRAKE shall complete the WORK, at its own expense, which shall include:
1. the design and construction of the **Relocated Crossing**;
  2. the design and construction of the **New Crossing**;
  3. the removal and closure of the **Existing Crossing**;
  4. obtaining United States Forest Service approval for the location of Transportation and Utility Systems and Facilities on Federal Land (Standard Form 299); and
  5. the design and construction of the realigned Road Segment.
- D. Upon completion of the WORK and acceptance by the COUNTY (as appropriate), DRAKE, at its expense, shall deliver to COUNTY any required right of way dedication for the **Road Segment**, as well as an assignment of authorization from the United States Forest Service for that portion of the **Road Segment** on federal land for the right to construct, use, maintain, repair, renew and reconstruct the **Road Segment**, the **Relocated Crossing** and **New Crossing**. The right of way dedication map is attached hereto as Exhibit 6. Upon completion of the dedication and assignment of authorization for the federal lands, DRAKE shall have no further responsibility for maintenance or repair of the **Road Segment**, as more specifically set forth in Article V, Section H.
- E. DRAKE shall secure all required permits, easements and right-of-ways necessary to complete the PROJECT in accordance with the PLANS.
- F. DRAKE shall file an application with the Commission for an order authorizing construction of the **New Crossing** in accordance with this AGREEMENT. Due to the need for DRAKE to commence cement plant operations by March 2010, it is anticipated

that DRAKE's New Crossing application shall be filed separately and prior to COUNTY's application requirements set forth in Article III.C.

### ARTICLE III-COUNTY OBLIGATIONS

- A. COUNTY shall timely provide DRAKE comments on the design plans at the 95% completion stage along with a copy of the final Plan submittal. A copy of the final PLANS shall be adopted and incorporated into this AGREEMENT by reference, and attached hereto as Exhibit 7.
- B. COUNTY shall provide any inspections necessary before final approval and acceptance of the reconstructed **Road Segment**.
- C. COUNTY shall file an application with the Commission for an order authorizing construction of the **Relocated Crossing**, and closure of the **Existing Crossing**, in a form similar to DRAKE's application for the **New Crossing**.
- D. COUNTY will provide DRAKE, upon request, access to information in its possession related to the location of any underground utility facilities in the right of way that are affected by the PROJECT. DRAKE agrees to coordinate with the COUNTY and any applicable public or private utility company and to be solely responsible for identifying and locating utility facilities. DRAKE shall further be responsible for the cost of relocating any wire lines, pipe lines and other utility facilities during the course of constructing the PROJECT..
- E. DRAKE shall, when appropriate, submit a traffic control plan to the COUNTY for approval. Upon approval by COUNTY, DRAKE shall be responsible for implementing the traffic control plan, including paying all costs thereof.

### ARTICLE IV-THE WORK

- A. All WORK contemplated in this AGREEMENT shall be performed in a good and workmanlike manner in accordance with the PLANS. Each portion shall be promptly commenced by the Parties hereto obligated to do the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes, or modifications during construction that affect the WORK obligated by DRAKE shall be agreed to by both Parties, and in conjunction with STAFF with respect to the CROSSINGS.
- B. The WORK as defined in the PLANS concerning the CROSSINGS, is subject to the Commission's approval, with minimum clearances of not less than those specified by the Commission, or as otherwise authorized by the Commission for DRAKE's tracks at this location.
- C. If COUNTY shall deem it necessary or desirable, in the future, due to traffic conditions or maintenance concerns, to alter or reconstruct the **Road Segment** or CROSSINGS herein contemplated, it may do so, the cost of which shall be paid by COUNTY. If further encroachment upon DRAKE'S property will result, then COUNTY, prior to



commencing any such alteration or reconstruction work, shall submit revised plans for review to DRAKE. In addition, prior to acquiring the desired property or altering or reconstructing the Road Segment or CROSSINGS, COUNTY shall consult with Drake and consider the execution of an addendum to this AGREEMENT or the completion of a separate agreement, related to the proposed alteration or reconstruction.. For any improvement to the CROSSINGS, COUNTY shall file an application with the Commission for approval prior to construction and upgrades.

- D. In the event conditions or circumstances require a change in the scope of WORK on the PROJECT as set forth in this AGREEMENT and in the PLANS, each party shall agree in writing to the changes, including payment responsibilities, prior to performing the work.

#### **ARTICLE V - MISCELLANEOUS**

- A. The Parties shall use arbitration after exhausting applicable administrative remedies to resolve disputes arising out of this AGREEMENT where the sole relief sought is monetary damages of \$100,000.00, or less, exclusive of interest and costs, as provided in A.R.S. § 12-1518.B. All the covenants and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto, except that no Party may assign any of its rights or obligations hereunder without the prior written consent of the other Party.
- C. The effective date of this AGREEMENT shall be the day on which the last Party executes the AGREEMENT.
- D. This AGREEMENT, including any schedules, exhibits or attachments hereto, constitutes the entire agreement between the Parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this AGREEMENT shall be valid unless it is in writing and signed by both parties.
- E. This AGREEMENT shall be governed by the laws of the State of Arizona, unless such laws are otherwise preempted by Federal statutes, rules and/or regulations.
- E. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.
- F. Any notice provided for or concerning this AGREEMENT shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

DRAKE

Manager – Public Projects  
Drake Cement, LLC  
1301 E  
Prescott, AZ 85034

COUNTY

County of Yavapai, Arizona  
Public Works Department  
Attn: County Engineer  
1100 Commerce Drive  
Prescott, Arizona 85007

- G. Once the **Relocated Crossing** and **New Crossing** have been constructed and placed into operation, DRAKE shall be responsible for maintaining CROSSING surfaces and active warning devices, while COUNTY shall be responsible for maintenance of road approaches, any sidewalks, roadway signs and pavement striping in accordance with the MUTCD.
- H. Each Party represents that it is a sophisticated Party capable of understanding all of the terms of this AGREEMENT, that it has had an opportunity to review this AGREEMENT with its counsel, and that it executes this AGREEMENT with full knowledge of the terms of the AGREEMENT. This AGREEMENT is not to be construed against the drafter.
- I. Indemnification And Liability. The Parties shall defend, indemnify, save and hold each other harmless their officials, directors, officers, employees, attorneys, agents, and representatives from and against any and all claims, actions, enforcement proceedings, liabilities, damages, losses, and/or expenses of any kind (including, but not limited to, costs of claim processing, investigation, litigation, attorneys fees, court costs, and costs of appellate proceedings) (hereinafter referred to as "Claims") relating to, arising out of, or alleged to have resulted from, in whole or in part, any error, mistake, omission, work, or services of a party, their directors, officers, employees, attorneys, agents, representatives, or any tier of subcontractors in the performance of this Agreement. Each Party's indemnification obligations hereunder includes Claims arising out of, or recovered under, Arizona's Workers' Compensation Law or the failure to conform to any Federal, State, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the indemnification provided hereunder shall apply to all Claims, except for Claims arising from the negligent or willful acts or omissions of a Party. Each Party shall have the right, at its sole discretion, to approve any defense pursuant to the indemnification obligations hereunder or to assume responsibility for its own defense and have the other Party pay all reasonable costs and expenses (including attorney fees) incurred in such defense.
- J. DRAKE shall comply with all applicable rules and regulations, including but not limited to A.A.C. R14-5-104.C.7, concerning time limits placed on blockage at the CROSSINGS resulting from railroad operations within the Drake Property.

DRAKE CEMENT, LLC

COUNTY OF YAVAPAI, ARIZONA

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk, Board of Supervisors

## LIST OF EXHIBITS

1. EXHIBIT 1 Map and Legal Description of Drake Property
2. EXHIBIT 2 Operating Agreement between Drake Cement, LLC and Drake Switching Company, LLC.
3. EXHIBIT 3 Diagram of Existing Crossing and Relocated Crossing
4. EXHIBIT 4 Diagram of Proposed New Crossing
5. EXHIBIT 5 Diagram of Road Segment
6. EXHIBIT 6 Dedicated Right of Way from U.S. Forest Service
7. EXHIBIT 7 Final Plans for Crossings and Road Segment



## **EXHIBIT 1**

**Exhibit 1**  
**(Legal Description of Property)**

Approximately 34.4 acres of railroad property and assets within Sections 28 and 33, T19N, R01W, Yavapai County Arizona (The first 6864 feet (1.3 mile) by 200 feet in width, starting at the BNSF switch east to the east end of the # 2 turn. This includes both the north curve (#1) connection and the south curve connection plus the 4.92 acres in the NE  $\frac{1}{4}$ , NW  $\frac{1}{4}$ , SW  $\frac{1}{4}$  of section 33.

As recorded per Book 178, Pages 68 and 69 of Land Surveys of Yavapai County Recorder's Office (May 2008).







## **EXHIBIT 2**

**OPERATING AGREEMENT**  
**OF**  
**DRAKE SWITCHING COMPANY, LLC**

This OPERATING AGREEMENT (this "Agreement") is made as of this 17 day of February 2010, by Skanon Investments, Inc. (the "Member").

**ARTICLE 1**

**FORMATION, NAME, PURPOSES**

**1.1 FORMATION.** The Member hereby forms a limited liability company (the "Company") pursuant to the Arizona Limited Liability Company Act (the "Act"), effective upon the filing of the Articles of Organization for the Company with the Arizona Corporation Commission. The Member will from time to time execute or cause to be executed all such certificates, fictitious name or business statements and other documents, and make or cause to be made all such filings, recordings and publishings, and do such other acts as the Member may deem necessary or appropriate to comply with the requirements of law for the formation and operation of the Company in all jurisdictions in which the Company desires to conduct business. The Member will cause the Company to be qualified or authorized to do business in any jurisdiction in which such qualification or authorization is necessary in connection with the conduct of the Company's business.

**1.2 NAME.** The name of the Company will be "Drake Switching Company, LLC."

**1.3 REGISTERED OFFICE.** The Company's registered office in the State of Arizona will be located at 14500 North Northsight Boulevard, Suite 317, Scottsdale, Arizona 85260 for the purpose of maintaining the records required to be maintained under the Act, or at such other location as the Member will determine in its sole discretion.

**1.4 PURPOSE AND POWERS.** The business and purpose of the Company is to acquire, own, finance, lease, manage, operate, maintain, sell, or otherwise dispose of a business engaged in the operation of a railroad switching yard. The Company may exercise all powers reasonable or necessary to pursue the same. The Company will have all of the powers permitted by law.

**1.5 TERM.** The term of the Company will be perpetual, unless sooner terminated under the provisions of Article 7 or in accordance with the Act.

**1.6 AGENT FOR SERVICE OF PROCESS.** The name and business address of the Company's initial agent for service of process are Marco Gomez-Barrios, 14500

North Northsight Boulevard, Suite 317, Scottsdale, Arizona 85260. The Member may remove and replace the Company's agent for service of process at any time.

## ARTICLE 2

### CAPITAL CONTRIBUTIONS

2.1 INITIAL CAPITAL CONTRIBUTION. Contemporaneously with the execution of this Agreement, the Member will make such contributions of cash and property to the capital of the Company as are necessary to accomplish the Company's purposes.

2.2 ADDITIONAL CAPITAL CONTRIBUTIONS. The Member may make such additional contributions to the capital of the Company as the Member determines are necessary in its sole and absolute discretion to pay when due the obligations and expenses of the Company or to otherwise accomplish the Company's purpose. This provision shall not operate for the benefit of or be enforceable by any creditors of the Company or any other third parties.

## ARTICLE 3

### MANAGEMENT

3.1 MANAGEMENT BY MEMBER. The business and affairs of the Company will be managed exclusively by the Member. The Member will direct, manage, and control the business of the Company and will have full and complete authority, power, and discretion to make any and all decisions and to do any and all things that the Member will deem to be reasonably required to accomplish the purpose and business of the Company.

3.2 MANAGEMENT POWERS AND RESPONSIBILITIES. Without limiting the generality of Section 3.1, the Member will have the power and authority on behalf of the Company:

(a) To sell property to or acquire property from any person as the Member may determine. The fact that the Member is directly or indirectly affiliated or connected with any such person will not prohibit the Member from dealing with that person;

(b) To open from time to time bank accounts in the name of the Company and to designate and remove from time to time, at its discretion, all signatories on such bank accounts;

(c) To borrow money from banks, other lending institutions, individuals, the Member, or affiliates of the Member on such terms as it deems appropriate, and in connection therewith, to hypothecate, encumber, and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

(d) To purchase liability and other insurance to protect the Company's property and business;

(e) To hold and own any Company real and/or personal properties in the name of the Company;

(f) To invest any Company funds (by way of example, but not limitation) in time deposits, short-term governmental obligations, commercial paper, or other investments;

(g) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan so long as such disposition does not violate or otherwise cause a default under any other agreement to which the Company may be bound;

(h) To execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes, and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, partnership agreements, and any other instruments or documents necessary, in the opinion of the Member, to the business of the Company;

(i) To employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and to compensate them from Company funds;

(j) To make an assignment for the benefit of creditors of the Company, file a voluntary petition in bankruptcy, or appoint a receiver for the Company;

(k) To enter into any and all other agreements on behalf of the Company with any other person or entity for any purpose, in such forms as the Member may approve; and

(l) To do and perform all other lawful acts as may be necessary or appropriate to the conduct of the Company's business.

**3.3 AUTHORITY TO BIND THE COMPANY.** Unless authorized in writing to do so by this Agreement or by the Member, no agent or employee of the Company will have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

**3.4 MEMBER HAS NO EXCLUSIVE DUTY TO COMPANY.** The Member will not be required to manage the Company as its sole and exclusive function. The Member may have other business interests and may engage in other activities in addition to those relating to the Company. The Company will not have any right, by virtue of this Agreement, to share or participate in such other activities of the Member or to the income or proceeds derived therefrom.

3.5 **RECORDS.** At the expense of the Company, the Member will maintain the following records required to be maintained by Section 29-607 of the Act, or any successor provision thereto, at the Company's registered office:

(a) The full name and last known business or mailing address of the Member;

(b) A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's currently effective written Operating Agreement and all amendments thereto, copies of any prior written Operating Agreement no longer in effect, and copies of any writings permitted or required with respect to the Member's obligation to contribute cash, property, or services;

(d) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(e) Copies of financial statements of the Company, if any, for the three most recent years;

(f) Minutes of every annual, special, and court-ordered meeting, if any; and

(g) Any written consents obtained from the Member for actions taken by the Member without a meeting.

3.6 **TAX RETURNS AND ELECTIONS.** The Member will at the expense of the Company cause the preparation and timely filing of all federal, state and local tax returns required to be filed by the Company, if any. All elections permitted to be made by the Company under federal, state or local law will be made by the Member in its sole discretion.

3.7 **EXCULPATION OF MEMBER.** Any act or the failure to do any act by the Member, or any shareholder, director, officer or employee of the Member (collectively the "Indemnified Parties"), the effect of which results in loss or damage to the Company, will not give rise to any liability to the Member or the Indemnified Parties, if such act or failure to act is done in good faith to promote the best interest of the Company or is done pursuant to advice of independent legal counsel, accountants or other experts selected, engaged or retained by the Member with reasonable care. The preceding sentence will not relieve any person of liability for gross negligence, bad faith, dishonesty or misappropriation of Company assets.

3.8 **INDEMNIFICATION OF MEMBER; INSURANCE.** The Company will, solely from Company assets, indemnify and hold the Member and the Indemnified Parties harmless from and against any loss, cost, damage, liability, injury or expense (including but not limited to attorneys' fees and disbursements) suffered or sustained by the Member and the

Indemnified Parties by reason of any acts, omissions or alleged acts or omissions arising out of activities on behalf of the Company or in furtherance of the interests of the Company, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim; provided that the acts or omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based were not performed or omitted as a result of gross negligence, bad faith, dishonesty or misappropriation of Company assets. The Company will also have the power to purchase and maintain insurance on behalf of the Member and the Indemnified Parties against any liability asserted against the Member and the Indemnified Parties and incurred by the Member and the Indemnified Parties in any such capacity or arising out of their status as a Member or an Indemnified Party, whether or not the Company would have the power to indemnify the Member or the Indemnified Party against such liability under the provisions of this Section 3.8 or applicable law.

#### ARTICLE 4

##### MEMBERS

4.1 LIMITATION OF LIABILITY. The Member's liability for the debts and obligations of the Company will be limited as set forth in Section 29-651 of the Act, or any successor provision thereto, and other applicable law.

4.2 MEETINGS OF THE MEMBER. There will be no required annual meeting by the Member. However, special meetings by the Member, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Member.

4.3 ACTION BY MEMBER WITHOUT A MEETING. Action required or permitted to be taken at a meeting of the Member may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by the Member.

#### ARTICLE 5

##### DISTRIBUTIONS AND TAX CLASSIFICATION

5.1 DISTRIBUTIONS PRIOR TO LIQUIDATION. Prior to the dissolution of the Company and the commencement of the liquidation of its assets and winding up of its affairs, the Member, promptly following the end of its fiscal year and at such other times as it may deem appropriate, will determine and distribute the Company's "net available cash flow" to the Member. For purposes of this Agreement, "net available cash flow" means the excess of gross cash receipts (exclusive of initial and additional capital contributions and, except to the extent the Member determines otherwise, proceeds received from any borrowings by the Company) over cash disbursements, without deduction for depreciation, cost recovery deductions and other non-cash charges, for (a) all operating costs, (b) all principal and interest payments on debts (including payments of Member loans), (c) all asset acquisition costs and

capital costs necessary for the maintenance, repair and improvement of the Company's assets, and (d) reasonable reserves, as determined by the Member.

**5.2 DISTRIBUTIONS IN LIQUIDATION.** Following the dissolution of the Company and the commencement of winding up and the liquidation of its assets, all distributions to the Member will be governed by Article 7.

**5.3 TAX CLASSIFICATION.** Solely for federal, state and local income tax purposes, as long as the Member is the sole member of the Company, the Member intends that the Company be treated either as a branch or division of the Member or disregarded. The Member will file all necessary or appropriate forms in accordance with such tax classification.

## **ARTICLE 6**

### **ADMISSIONS**

No person will be admitted as a member of the Company after the date of formation of the Company without the written consent or approval of the Member. Upon admission, the members will amend this Agreement to reflect the admission of the new member.

## **ARTICLE 7**

### **DISSOLUTION AND TERMINATION**

**7.1 DISSOLUTION.** The Company will dissolve upon the first to occur of any of the following events:

- (a) The written election of the Member any time; or
- (b) The entry of a decree of dissolution under Section 29-785 of the Act.

Unless otherwise required by the Act, the occurrence of an event of withdrawal (as defined in Section 29-733 of the Act) with respect to the Member will not cause a dissolution of the Company.

**7.2 NOTICE OF WINDING UP.** Promptly following the dissolution of the Company, the Member will cause a Notice of Winding Up to be filed with the Arizona Corporation Commission in accordance with the Act.

**7.3 LIQUIDATION, WINDING UP AND DISTRIBUTION OF ASSETS.** Following an event that causes a dissolution of the Company, the Member will proceed to liquidate the Company's assets and properties, discharge the Company's obligations, and wind up the Company's business and affairs as promptly as is consistent with obtaining the fair value of the Company's assets and properties. The proceeds of liquidation of the Company's assets, to the extent sufficient therefor, will be applied and distributed as follows:



(a) First, to the payment and discharge of all of the Company's debts and liabilities except those owing to the Member or to the establishment of any reasonable reserves for contingent or unliquidated debts and liabilities;

(b) Second, to the payment of any debts and liabilities owing to the Member; and

(c) Third, to the Member.

Notwithstanding anything in this Section 7.3 to the contrary, in lieu of liquidating all of the Company's assets and properties, the Member may make in-kind liquidating distributions of the Company's assets and properties in satisfaction of its liquidation priorities set forth in Sections 7.3(b) and 7.3(c).

**7.4 DEFICIT CAPITAL ACCOUNT.** Except as otherwise required by the Act, the Member will have no obligation to contribute or advance any funds or other property to the Company by reason of the fact that the Company's assets and properties are not sufficient to pay all of the Company's debts and obligations upon completion of winding up or at any other time.

**7.5 ARTICLES OF TERMINATION.** When all of the remaining property and assets have been applied and distributed in accordance with Section 7.3, the Member will cause Articles of Termination to be executed and filed with the Arizona Corporation Commission in accordance with the Act.

## ARTICLE 8

### MISCELLANEOUS PROVISIONS

**8.1 APPLICATION OF ARIZONA LAW.** This Agreement will be construed and enforced in accordance with the laws of the State of Arizona.

**8.2 AMENDMENTS.** This Agreement may not be amended except by written instrument executed by the Member.

**8.3 HEADINGS.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision of this Agreement.

**8.4 SEVERABILITY.** If any provision of this Agreement or the application of any provision of this Agreement to any person or circumstance will be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application the remainder of this Agreement will not be affected and will be enforceable to the fullest extent permitted by law.

8.5 **SUCCESSORS AND ASSIGNS.** Each and all of the covenants, terms, provisions, and agreements herein contained will be binding upon and inure to the benefit of the Member and, to the extent permitted by this Agreement and by applicable law, its successors and assigns.

8.6 **CREDITORS AND OTHER THIRD PARTIES.** None of the provisions of this Agreement will be for the benefit of or enforceable by any creditor of the Member or the Company or by any other third party.

8.7 **ENTIRE AGREEMENT; SUPERSEDEDURE.** This Agreement constitutes the entire statement of the Member relating to the Company and supersedes all prior statements, contracts or agreements with respect to the subject matter of this Agreement, whether written or oral.

The undersigned has duly executed this Operating Agreement of Drake Switching Company, LLC as of the date first set forth above.

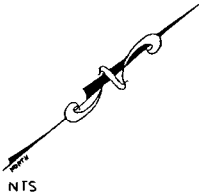
**MEMBER:**

SKANON INVESTMENTS, INC., an Arizona corporation

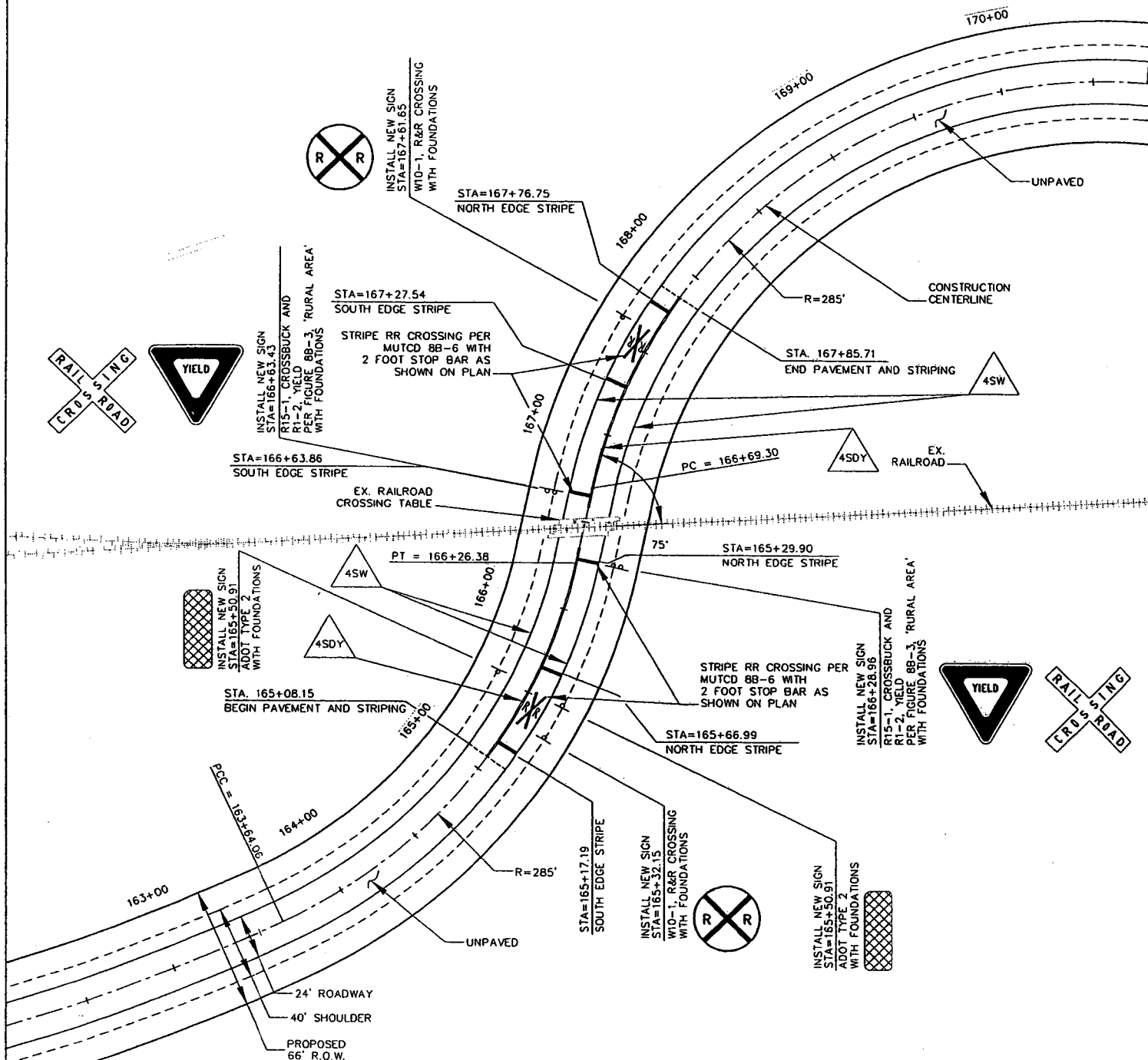


Sergio B. Muñoz, Authorized Officer

## **EXHIBIT 3**



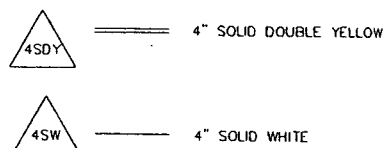
NTS



# SIGNAGE AND STRIPING EASTERLY RAILROAD CROSSING

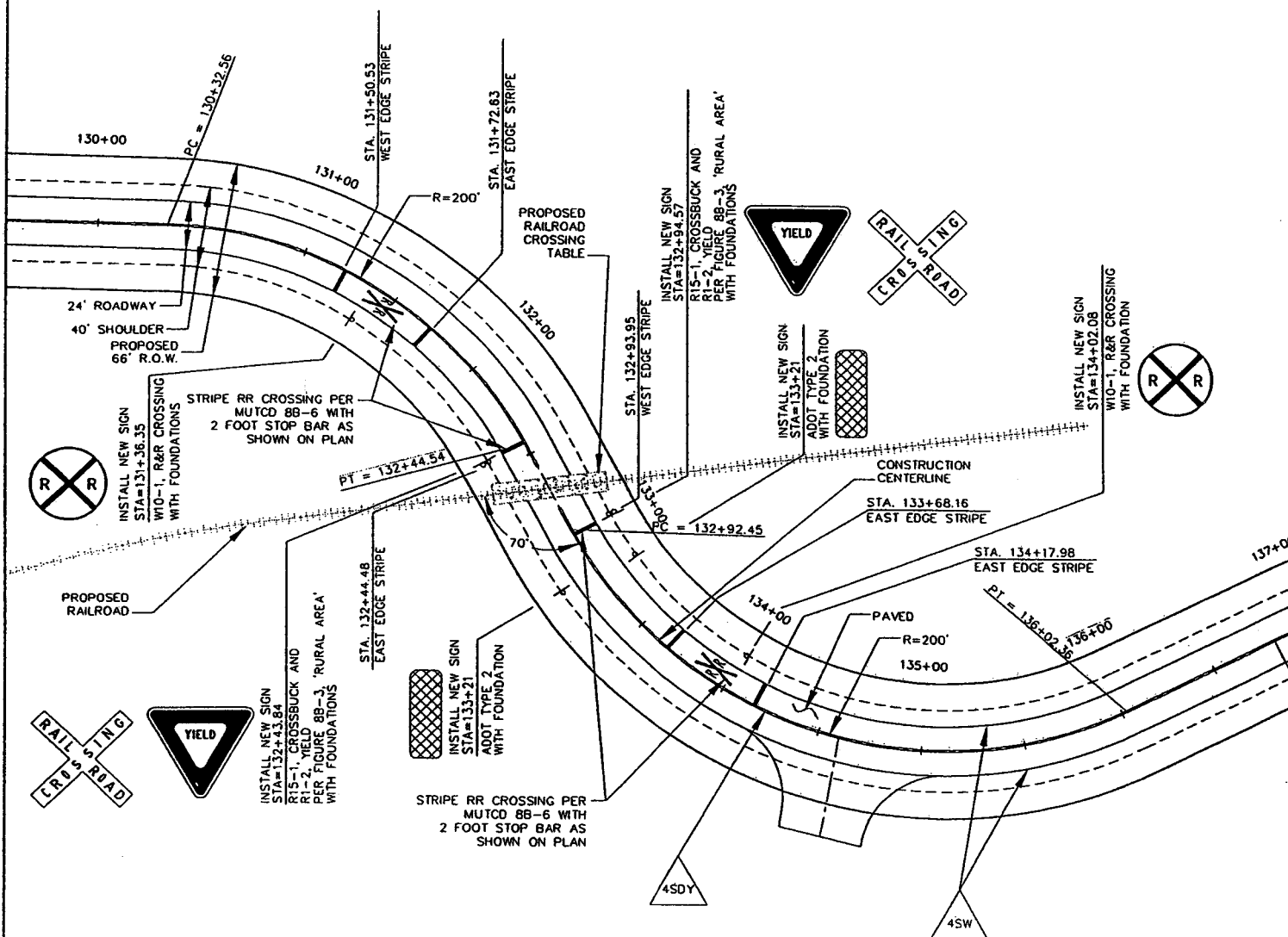
MARCH 19, 2010

## STRIPING LEGEND:



## **EXHIBIT 4**

NTS



# SIGNAGE AND STRIPING CENTER RAILROAD CROSSING

MARCH 19, 2010

## STRIPING LEGEND:

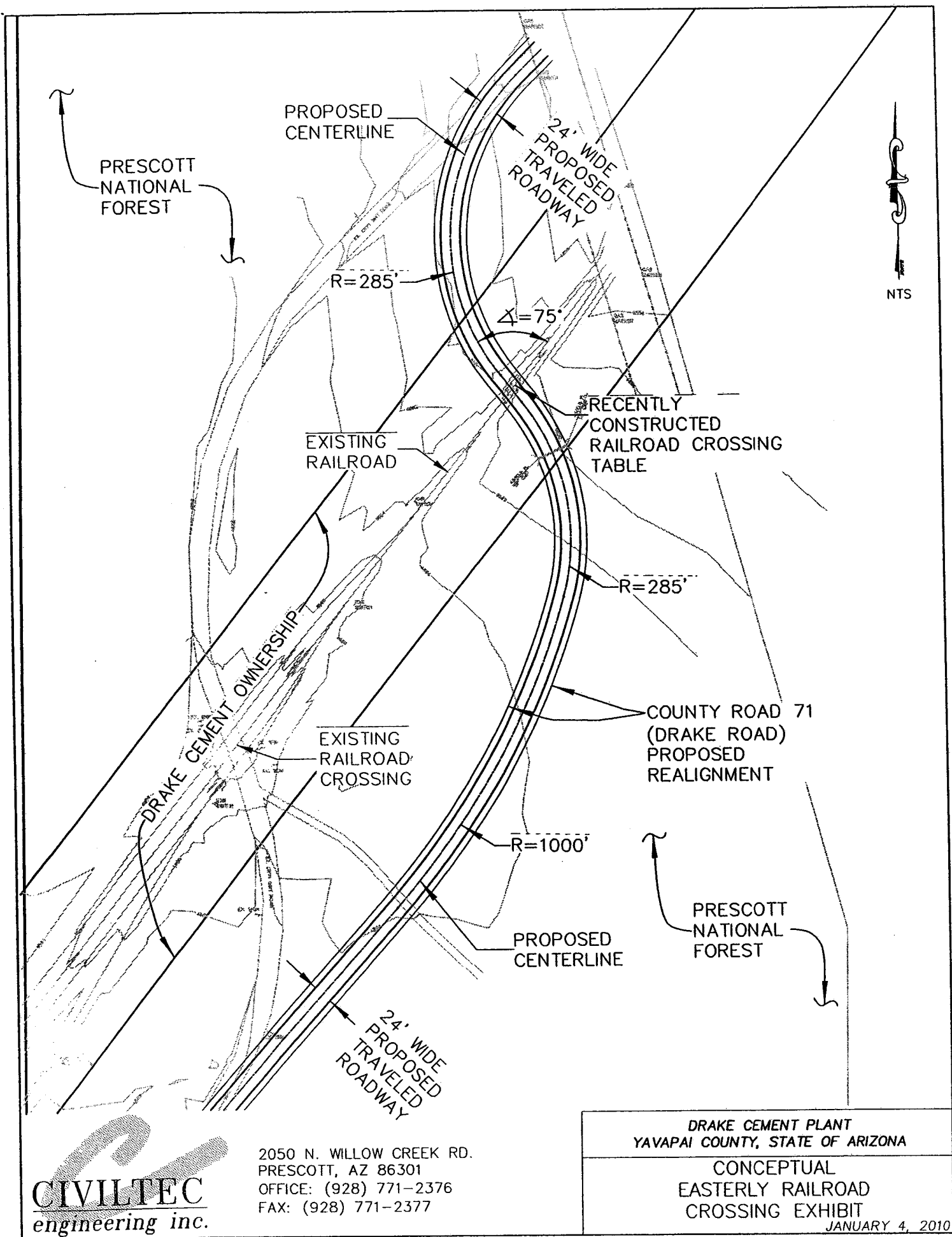
- 4SDY 4" SOLID DOUBLE YELLOW
- 4SW 4" SOLID WHITE

## **EXHIBIT 5**





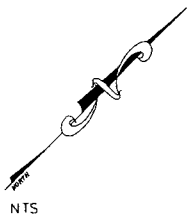
## **EXHIBIT 6**



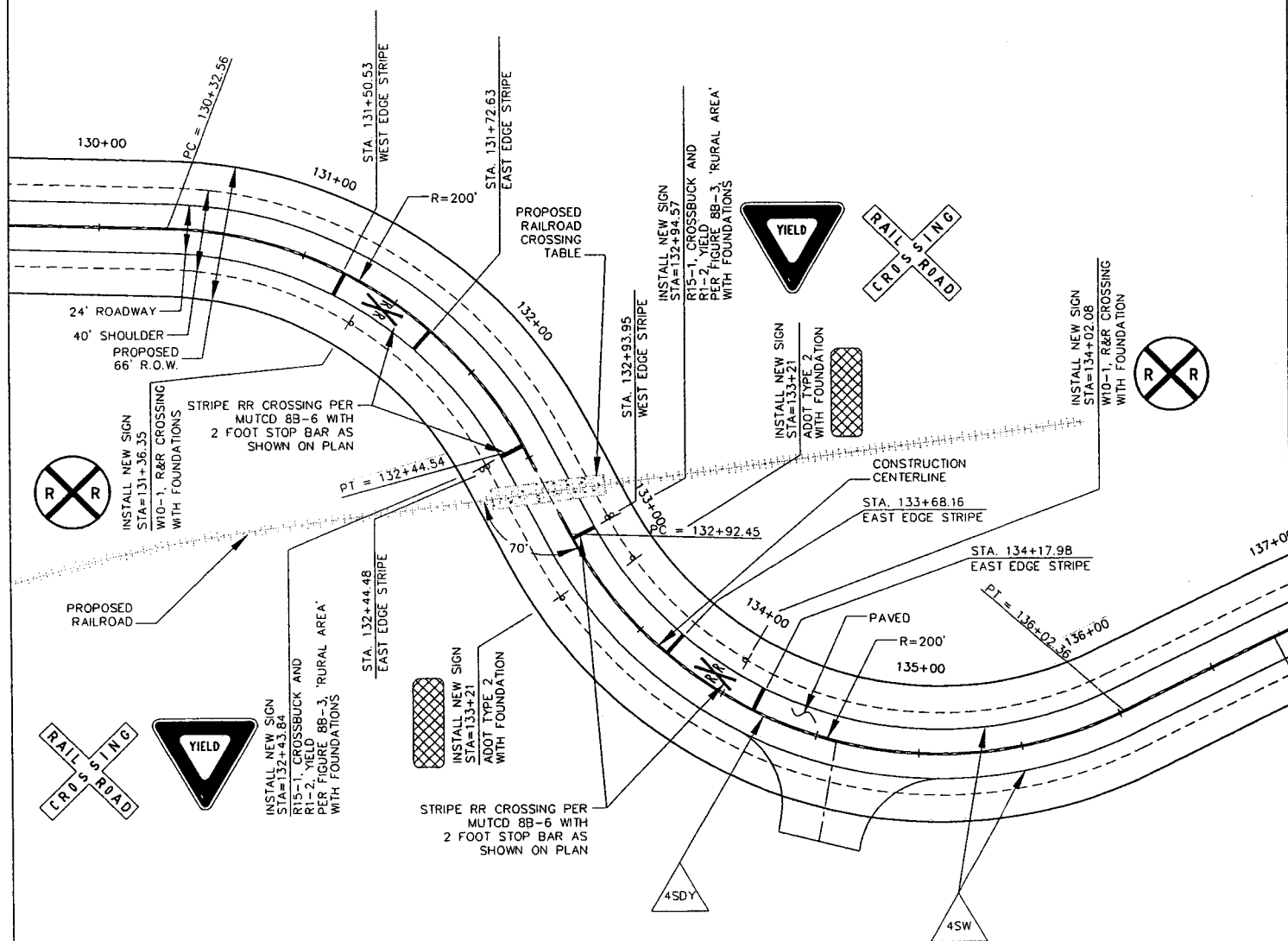
## **EXHIBIT 7**

**Application For Establishment  
Of New Public Highway-Rail Grade Crossing**

**EXHIBIT 2**



NTS



**STRIPING LEGEND:**



4" SOLID DOUBLE YELLOW



4" SOLID WHITE

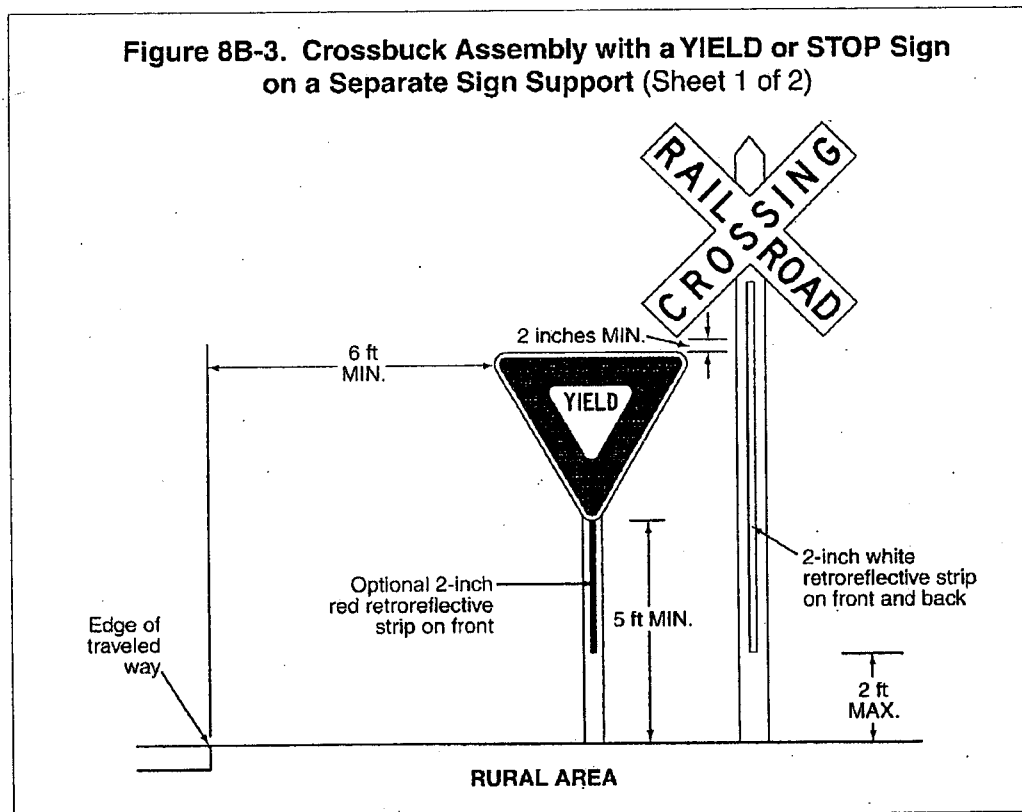
**SIGNAGE AND STRIPING  
CENTER RAILROAD CROSSING**

MARCH 19, 2010

**Application For Establishment  
Of New Public Highway-Rail Grade Crossing**

**EXHIBIT 3**

**Figure 8B-3. Crossbuck Assembly with a YIELD or STOP Sign on a Separate Sign Support (Sheet 1 of 2)**



**Application For Establishment  
Of New Public Highway-Rail Grade Crossing**

**EXHIBIT 4**



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**From:** Tim Stotler [Tim.Stotler@co.yavapai.az.us]  
**Sent:** Tuesday, March 09, 2010 10:08 AM  
**To:** 'Andrés Sotil'; 'Rick Shroads'  
**Cc:** 'Brian Lehman'; Phil Bourdon; Dale Address  
**Subject:** Drake Road Traffic Counts

For your information and use:

Below is the tabulation of historic traffic count data on Drake Road sorted by date with the most recent counts at the top of the list. The locations located 1.170 and 1.214 miles from SR 89 are on the pavement between the cement plant and the highway. We did one count located just east of the third rail crossing on March 3<sup>rd</sup> at location labeled as 2.75 mi from S.R. 89 r/w.

Please let me know if there is anything else you need from the County at this time.

Tim Stotler, P.E.  
Yavapai County Assistant County Engineer

Location	Date	ADT
1.214 from S.R. 89 r/w	3/3/10	1336
2.75 mi from S.R. 89 r/w	3/3/10	221
1.170 from S.R. 89 r/w	6/16/08	996
1.170 from S.R. 89 r/w	4/23/08	1058
1.170 from S.R. 89 r/w	6/15/06	516
1.170 from S.R. 89 r/w	5/2/05	484
1.170 from S.R. 89 r/w	7/21/04	414
1.170 from S.R. 89 r/w	9/17/03	477
1.170 from S.R. 89 r/w	6/19/02	404
1.170 from S.R. 89 r/w	4/9/02	461
1.170 from S.R. 89 r/w	7/31/00	436
1.170 from S.R. 89 r/w	2/23/99	463
1.170 from S.R. 89 r/w	6/16/98	332
1.170 from S.R. 89 r/w	9/17/96	284
1.170 from S.R. 89 r/w	8/13/96	232
1.170 from S.R. 89 r/w	9/22/95	260
1.170 from S.R. 89 r/w	12/8/94	168
1.170 from S.R. 89 r/w	8/9/94	189
1.170 from S.R. 89 r/w	8/25/93	98
1.170 from S.R. 89 r/w	6/1/92	133
1.170 from S.R. 89 r/w	7/31/91	137
1.170 from S.R. 89 r/w	4/19/91	166
1.170 from S.R. 89 r/w	6/7/90	150
1.170 from S.R. 89 r/w	5/8/90	159
1.170 from S.R. 89 r/w	2/9/90	114
1.170 from S.R. 89 r/w	8/2/89	151
1.170 from S.R. 89 r/w	7/13/88	83

**Application For Establishment  
Of New Public Highway-Rail Grade Crossing**

**EXHIBIT 5**

Construction of Concrete Pavement at RR Crossing	\$140,000.00
Engineering Inspection	\$3,000.00
Stake and Surveying	\$3,000.00
Material Testing	\$3,000.00
Design of Railroad Crossing Center	\$30,000.00
Subgrade Materials for RR Crossings Construction	\$20,000.00
Subtotal	\$199,000.00
Contingencies (15%)	\$29,850.00
Total	\$228,850.00

THIS IS A CONFORMED COPY OF INSTRUMENT  
RECORDED ON DATE 4/29/10 TIME 11:05  
IN BOOK 4737 PAGE 696  
ANAWAYMAN TRUJILLO RECORDER  
EMO DEPUTY

## YAVAPAI COUNTY

PUBLIC WORKS ENGINEERING DEPARTMENT

COUNTY IMPROVEMENT PROJECT AGREEMENT

for the

RE-ALIGNMENT OF A PORTION OF YAVAPAI COUNTY ROAD 71

and the

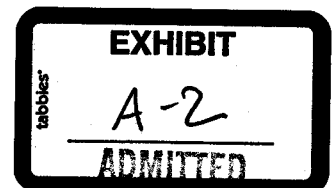
ESTABLISHMENT OF TWO PUBLIC HIGHWAY-RAIL GRADE CROSSINGS AND RAIL  
OPERATIONS

BY AND BETWEEN

YAVAPAI COUNTY

AND

DRAKE CEMENT, LLC



THIS AGREEMENT is made this 19<sup>th</sup> day of April, 2010, between DRAKE CEMENT, LLC, a Delaware limited liability company ("DRAKE"), and YAVAPAI COUNTY, a political subdivision of the State of Arizona, hereinafter referred to as (the "COUNTY")(each a "Party" and collectively, the "Parties").

**RECITALS:**

- A. DRAKE owns a railroad switchyard and associated railroad tracks ("Drake Yard"), and an industrial spur that, upon completion, will initially solely service a cement plant on certain other Drake owned property (the "Drake Spur" and collectively with the Drake Yard, the "Property"), in the County of Yavapai, Arizona as shown on Exhibit 1.
- B. DRAKE has entered into an Operating Agreement dated January 22, 2010 with DRAKE SWITCHING COMPANY, LLC, an Arizona limited liability company ("Authorized Representative"), attached hereto as Exhibit 2, to operate the tracks and rail car activity on the Drake Property.
- C. DRAKE proposes to relocate an existing at-grade public rail grade crossing (AAR/DOT # 025751N) located at milepost 3 of Yavapai County Road 71 ("CR71") within the Drake Yard at railroad milepost 0000.72 ("**Existing Crossing**"). The relocated crossing will be located near railroad milepost 0000.75 and be assigned the same AAR/DOT# 025751N ("**Relocated Crossing**"). Construction and use of the **Relocated Crossing** will also cause the removal and permanent closure of the **Existing Crossing**. Diagrams of both the **Existing Crossing** and the **Relocated Crossing** are depicted on Exhibit 3.
- D. DRAKE also proposes to establish a new at-grade public crossing located on the Drake Spur at milepost 2 of CR71 ("**New Crossing**"). The **New Crossing** will be located near railroad milepost 0000.50 and will be assigned AAR/DOT# 932867S. A diagram of the proposed **New Crossing** is depicted on Exhibit 4.
- E. The Parties acknowledge that construction of the **Relocated Crossing** and the **New Crossing** and the closure of the **Existing Crossing** are subject to approval by the Arizona Corporation Commission ("Commission").
- F. In order to facilitate the construction, operation and maintenance of the **Relocated Crossing** and **New Crossing**, as well as the closure of the **Existing Crossing**, the Parties agree that a realignment of a portion of CR71 (the "**Road Segment**") is required in order to maximize public safety at each of the crossings. The proposed realigned **Road Segment** is shown on Exhibit 5.
- G. The Parties hereto desire to express in writing their understanding and agreement with respect to responsibilities for the construction, operation and maintenance of the **Relocated Crossing** and **New Crossing**, and the permanent closure of the **Existing Crossing** as well as the construction and subsequent dedication of the **Road Segment** (collectively, the "PROJECT").

- H. All numbered exhibits are incorporated and made a part of this AGREEMENT by reference and attachment regardless of designation or alphabetical order.

### AGREEMENT

NOW, THEREFORE, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

### ARTICLE I - DEFINITIONS

- A. AGREEMENT means this specific AGREEMENT with all attached exhibits together with all attachments incorporated by reference.
- B. CROSSINGS, when used in plural form, shall mean the following:
- Existing Crossing** means the existing at-grade public road crossing in the Drake Yard for CR71 located at railroad milepost 0000.72 (AAR/DOT # 025751N). Exhibit 2.
- Relocated Crossing** means a new at-grade public road crossing in the Drake Yard for CR71 located at railroad milepost 0000.75 (AAR/DOT # 025751N). Exhibit 3.
- New Crossing** means a new at-grade public road crossing on the Drake Spur for CR71 at railroad milepost 0000.50 (AAR/DOT # 932867S). Exhibit 4.
- C. PLANS means (i) the final one hundred percent (100%) completed PROJECT plans and specifications affecting and pertaining to the Drake Property. All project plans shall be sealed by an engineer who is registered in the State of Arizona.
- D. PROJECT means all work of every kind and character required in connection with all construction and/or closure (as appropriate) of the realigned **Road Segment** and the **CROSSINGS**. The PROJECT includes, but is not limited to, the construction of any and all roadway improvements, installation of railroad safety devices and appurtenances, communication lines, signal and electrical lines and appurtenances, grading, both temporary and permanent drainage facilities, irrigation facilities, signing and striping, modification to utilities, right of way acquisition, preliminary and construction engineering, contract preparation, cuts, fills, highway pavement, retaining walls and all highway facilities at the locations shown on PROJECT PLANS and specifications included herein by reference only.
- E. PROJECT COSTS means the actual fees and costs for the entire PROJECT, which shall be the responsibility of DRAKE.
- F. STAFF means the staff of the Commission's Railroad Safety Division.

- F. WORK means any work to be performed by DRAKE or its contractors or agents, in accordance with the PLANS. WORK shall include engineering, design, management, administration, design, and construction labor, including approved changes in scope.

## ARTICLE II - DRAKE OBLIGATIONS

- A. DRAKE shall, in cooperation with both the COUNTY and STAFF, design all phases of the PROJECT in compliance with all applicable federal, state and local rules and regulations governing the subject matter of this AGREEMENT.
- B. DRAKE shall promptly provide COUNTY and STAFF the opportunity to review and comment on progress copies of the design plans at the 95% completion stages, along with a copy of the final PLAN submittal. Submittal to the COUNTY shall be for purposes of consistency with adopted road design and construction specifications and to STAFF for review of safety issues related to the CROSSINGS. Upon receipt of the final plan submittal, COUNTY shall signify by letter addressed to DRAKE its full approval of the design PLANS.
- C. DRAKE shall complete the WORK, at its own expense, which shall include:
1. the design and construction of the **Relocated Crossing**;
  2. the design and construction of the **New Crossing**;
  3. the removal and closure of the **Existing Crossing**;
  4. obtaining United States Forest Service approval for the location of Transportation and Utility Systems and Facilities on Federal Land (Standard Form 299); and
  5. the design and construction of the realigned Road Segment.
- D. Upon completion of the WORK and acceptance by the COUNTY (as appropriate), DRAKE, at its expense, shall deliver to COUNTY any required right of way dedication for the **Road Segment**, as well as an assignment of authorization from the United States Forest Service for that portion of the **Road Segment** on federal land for the right to construct, use, maintain, repair, renew and reconstruct the **Road Segment**, the **Relocated Crossing** and **New Crossing**. The right of way dedication map is attached hereto as Exhibit 6. Upon completion of the dedication and assignment of authorization for the federal lands, DRAKE shall have no further responsibility for maintenance or repair of the **Road Segment**, as more specifically set forth in Article V, Section H.
- E. DRAKE shall secure all required permits, easements and right-of-ways necessary to complete the PROJECT in accordance with the PLANS.
- F. DRAKE shall file an application with the Commission for an order authorizing construction of the **New Crossing** in accordance with this AGREEMENT. Due to the need for DRAKE to commence cement plant operations by March 2010, it is anticipated

that DRAKE's New Crossing application shall be filed separately and prior to COUNTY's application requirements set forth in Article III.C.

### ARTICLE III-COUNTY OBLIGATIONS

- A. COUNTY shall timely provide DRAKE comments on the design plans at the 95% completion stage along with a copy of the final Plan submittal. A copy of the final PLANS shall be adopted and incorporated into this AGREEMENT by reference, and attached hereto as Exhibit 7.
- B. COUNTY shall provide any inspections necessary before final approval and acceptance of the reconstructed Road Segment.
- C. COUNTY shall file an application with the Commission for an order authorizing construction of the Relocated Crossing, and closure of the Existing Crossing, in a form similar to DRAKE's application for the New Crossing.
- D. COUNTY will provide DRAKE, upon request, access to information in its possession related to the location of any underground utility facilities in the right of way that are affected by the PROJECT. DRAKE agrees to coordinate with the COUNTY and any applicable public or private utility company and to be solely responsible for identifying and locating utility facilities. DRAKE shall further be responsible for the cost of relocating any wire lines, pipe lines and other utility facilities during the course of constructing the PROJECT..
- E. DRAKE shall, when appropriate, submit a traffic control plan to the COUNTY for approval. Upon approval by COUNTY, DRAKE shall be responsible for implementing the traffic control plan, including paying all costs thereof.

### ARTICLE IV-THE WORK

- A. All WORK contemplated in this AGREEMENT shall be performed in a good and workmanlike manner in accordance with the PLANS. Each portion shall be promptly commenced by the Parties hereto obligated to do the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes, or modifications during construction that affect the WORK obligated by DRAKE shall be agreed to by both Parties, and in conjunction with STAFF with respect to the CROSSINGS.
- B. The WORK as defined in the PLANS concerning the CROSSINGS, is subject to the Commission's approval, with minimum clearances of not less than those specified by the Commission, or as otherwise authorized by the Commission for DRAKE's tracks at this location.
- C. If COUNTY shall deem it necessary or desirable, in the future, due to traffic conditions or maintenance concerns, to alter or reconstruct the Road Segment or CROSSINGS herein contemplated, it may do so, the cost of which shall be paid by COUNTY. If further encroachment upon DRAKE'S property will result, then COUNTY, prior to



commencing any such alteration or reconstruction work, shall submit revised plans for review to DRAKE. In addition, prior to acquiring the desired property or altering or reconstructing the Road Segment or CROSSINGS, COUNTY shall consult with Drake and consider the execution of an addendum to this AGREEMENT or the completion of a separate agreement, related to the proposed alteration or reconstruction.. For any improvement to the CROSSINGS, COUNTY shall file an application with the Commission for approval prior to construction and upgrades.

- D. In the event conditions or circumstances require a change in the scope of WORK on the PROJECT as set forth in this AGREEMENT and in the PLANS, each party shall agree in writing to the changes, including payment responsibilities, prior to performing the work.

#### ARTICLE V - MISCELLANEOUS

- A. The Parties shall use arbitration after exhausting applicable administrative remedies to resolve disputes arising out of this AGREEMENT where the sole relief sought is monetary damages of \$100,000.00, or less, exclusive of interest and costs, as provided in A.R.S. § 12-1518.B. All the covenants and provisions of this AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto, except that no Party may assign any of its rights or obligations hereunder without the prior written consent of the other Party.
- C. The effective date of this AGREEMENT shall be the day on which the last Party executes the AGREEMENT.
- D. This AGREEMENT, including any schedules, exhibits or attachments hereto, constitutes the entire agreement between the Parties, and no understanding or obligation not expressly set forth herein shall be binding upon them. No modification, amendment or alteration of this AGREEMENT shall be valid unless it is in writing and signed by both parties.
- E. This AGREEMENT shall be governed by the laws of the State of Arizona, unless such laws are otherwise preempted by Federal statutes, rules and/or regulations.
- E. The waiver by either party of any breach or failure to provide full performance under any of the terms or conditions of this AGREEMENT shall not be construed as a waiver of any other term or condition, or of any subsequent breach of the same or any other term or condition.
- F. Any notice provided for or concerning this AGREEMENT shall be in writing and be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

DRAKE

Manager – Public Projects  
Drake Cement, LLC  
1301 E  
Prescott, AZ 85034

COUNTY

County of Yavapai, Arizona  
Public Works Department  
Attn: County Engineer  
1100 Commerce Drive  
Prescott, Arizona 85007

- G. Once the **Relocated Crossing and New Crossing** have been constructed and placed into operation, DRAKE shall be responsible for maintaining CROSSING surfaces and active warning devices, while COUNTY shall be responsible for maintenance of road approaches, any sidewalks, roadway signs and pavement striping in accordance with the MUTCD.
- H. Each Party represents that it is a sophisticated Party capable of understanding all of the terms of this AGREEMENT, that it has had an opportunity to review this AGREEMENT with its counsel, and that it executes this AGREEMENT with full knowledge of the terms of the AGREEMENT. This AGREEMENT is not to be construed against the drafter.
- I. Indemnification And Liability. The Parties shall defend, indemnify, save and hold each other harmless their officials, directors, officers, employees, attorneys, agents, and representatives from and against any and all claims, actions, enforcement proceedings, liabilities, damages, losses, and/or expenses of any kind (including, but not limited to, costs of claim processing, investigation, litigation, attorneys fees, court costs, and costs of appellate proceedings) (hereinafter referred to as "Claims") relating to, arising out of, or alleged to have resulted from, in whole or in part, any error, mistake, omission, work, or services of a party, their directors, officers, employees, attorneys, agents, representatives, or any tier of subcontractors in the performance of this Agreement. Each Party's indemnification obligations hereunder includes Claims arising out of, or recovered under, Arizona's Workers' Compensation Law or the failure to conform to any Federal, State, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that the indemnification provided hereunder shall apply to all Claims, except for Claims arising from the negligent or willful acts or omissions of a Party. Each Party shall have the right, at its sole discretion, to approve any defense pursuant to the indemnification obligations hereunder or to assume responsibility for its own defense and have the other Party pay all reasonable costs and expenses (including attorney fees) incurred in such defense.
- J. DRAKE shall comply with all applicable rules and regulations, including but not limited to A.A.C. R14-5-104.C.7, concerning time limits placed on blockage at the CROSSINGS resulting from railroad operations within the Drake Property.

DRAKE CEMENT, LLC

By: [Signature]  
Title: COB  
Its: \_\_\_\_\_  
Date: 04-19-10

COUNTY OF YAVAPAI, ARIZONA

By: [Signature]  
Title: Chairman  
Its: \_\_\_\_\_  
Date: 4/19/10

ATTEST:

[Signature]  
Clerk, Board of Supervisors

## LIST OF EXHIBITS

1. EXHIBIT 1 Map and Legal Description of Drake Property
2. EXHIBIT 2 Operating Agreement between Drake Cement, LLC and Drake Switching Company, LLC.
3. EXHIBIT 3 Diagram of Existing Crossing and Relocated Crossing
4. EXHIBIT 4 Diagram of Proposed New Crossing
5. EXHIBIT 5 Diagram of Road Segment
6. EXHIBIT 6 Dedicated Right of Way from U.S. Forest Service
7. EXHIBIT 7 Final Plans for Crossings and Road Segment

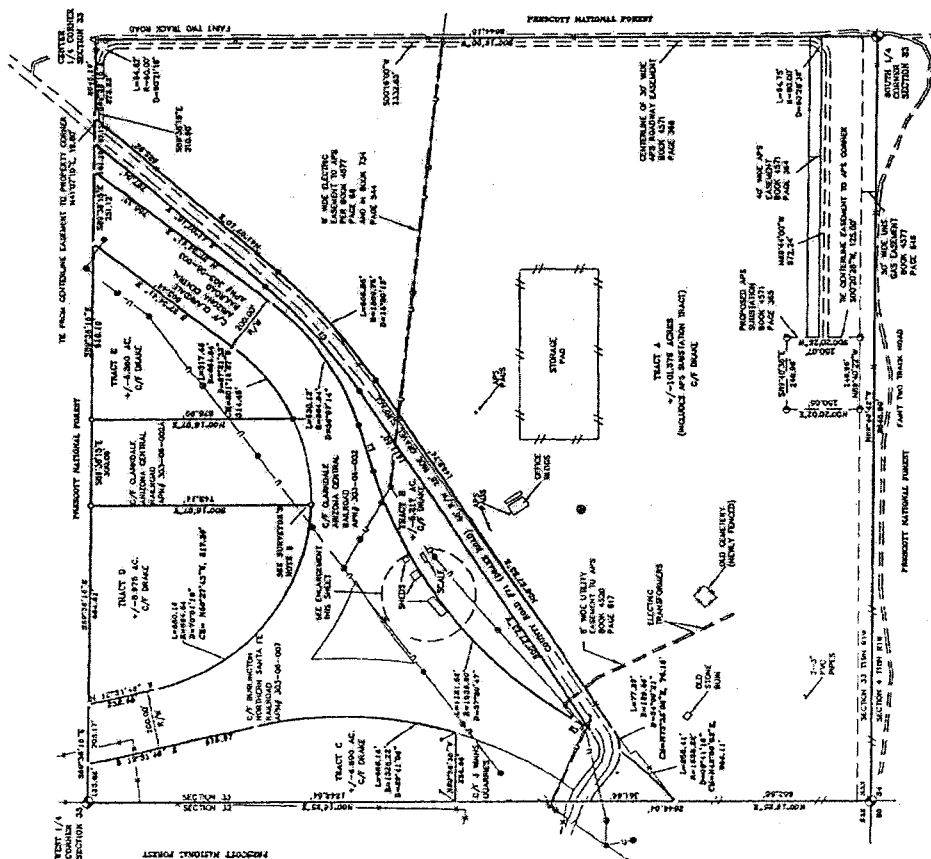
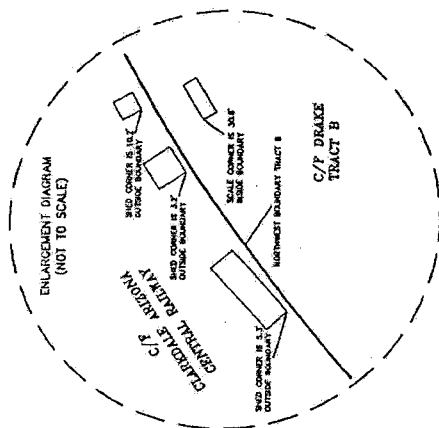
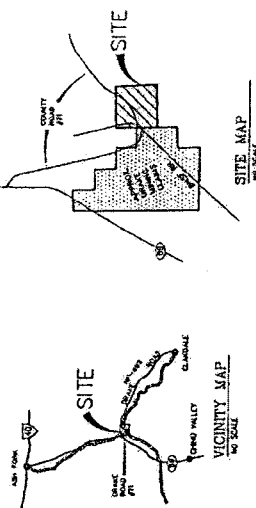
## **EXHIBIT 1**

**Exhibit 1**  
(Legal Description of Property)

Approximately 34.4 acres of railroad property and assets within Sections 28 and 33, T19N, R01W, Yavapai County Arizona (The first 6864 feet (1.3 mile) by 200 feet in width, starting at the BNSF switch east to the east end of the # 2 turn. This includes both the north curve (#1) connection and the south curve connection plus the 4.92 acres in the NE ¼, NW ¼, SW ¼ of section 33.

As recorded per Book 178, Pages 68 and 69 of Land Surveys of Yavapai County Recorder's Office (May 2008).

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 33  
TOWNSHIP 19 NORTH, RANGE 1 WEST, GILA AND SALT  
RIVER BASE AND MERIDIAN, YAVAPAI COUNTY ARIZONA

$$89 \overline{) 821.57}$$


## REFERENCE DOCUMENTS

[illegible]

## BASIS OF BEARINGS

MEASUREMENTS OF THIS SURVEY ARE BASED UPON GPS OBSERVATIONS OF THE PERIMETER OF EACH BOUNDARY LINE SHOWN WITHIN

423 5899

Civil Tech Engineering  
Fall 1994 14 102002  
at 8:54 pm  
75 at 1 and 102002

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 01-11-2001 BY 60322 UCBAW

Director, FBI  
J. Edgar Hoover  
Washington, D.C.

# SURVEYORS' CERTIFICATE

[illegible]

0846015100 1001510000 1001510000 1001510000

**QUESTEC**  
engineering Inc.  
3000 N. Wilcox Creek Rd.  
Princeton, AZ 85501  
20118 1194 ext. 246, 110  
FAX 20118 410337

Good and experienced  
design team  
Detailed and accurate  
a proven  
satisfactory way

Phone: (938) 771-2376  
Fax: (938) 771-1377

Phone: (933) 942-0934  
Fax: (933) 941-1871

[illegible]

ALTA/ACSM LAND TITLE SURVEY  
DRAKE CEMENT LLC  
YAVAPAI COUNTY  
ARIZONA

1 OF 2





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**EXHIBIT 2**

OPERATING AGREEMENT  
OF  
DRAKE SWITCHING COMPANY, LLC

This OPERATING AGREEMENT (this "Agreement") is made as of this 7 day of February 2010, by Skanon Investments, Inc. (the "Member").

ARTICLE 1

FORMATION, NAME, PURPOSES

1.1 **FORMATION.** The Member hereby forms a limited liability company (the "Company") pursuant to the Arizona Limited Liability Company Act (the "Act"), effective upon the filing of the Articles of Organization for the Company with the Arizona Corporation Commission. The Member will from time to time execute or cause to be executed all such certificates, fictitious name or business statements and other documents, and make or cause to be made all such filings, recordings and publishings, and do such other acts as the Member may deem necessary or appropriate to comply with the requirements of law for the formation and operation of the Company in all jurisdictions in which the Company desires to conduct business. The Member will cause the Company to be qualified or authorized to do business in any jurisdiction in which such qualification or authorization is necessary in connection with the conduct of the Company's business.

1.2 **NAME.** The name of the Company will be "Drake Switching Company, LLC."

1.3 **REGISTERED OFFICE.** The Company's registered office in the State of Arizona will be located at 14500 North Northsight Boulevard, Suite 317, Scottsdale, Arizona 85260 for the purpose of maintaining the records required to be maintained under the Act, or at such other location as the Member will determine in its sole discretion.

1.4 **PURPOSE AND POWERS.** The business and purpose of the Company is to acquire, own, finance, lease, manage, operate, maintain, sell, or otherwise dispose of a business engaged in the operation of a railroad switching yard. The Company may exercise all powers reasonable or necessary to pursue the same. The Company will have all of the powers permitted by law.

1.5 **TERM.** The term of the Company will be perpetual, unless sooner terminated under the provisions of Article 7 or in accordance with the Act.

1.6 **AGENT FOR SERVICE OF PROCESS.** The name and business address of the Company's initial agent for service of process are Marco Gomez-Barrios, 14500

North Northsight Boulevard, Suite 317, Scottsdale, Arizona 85260. The Member may remove and replace the Company's agent for service of process at any time.

## ARTICLE 2

### CAPITAL CONTRIBUTIONS

2.1 INITIAL CAPITAL CONTRIBUTION. Contemporaneously with the execution of this Agreement, the Member will make such contributions of cash and property to the capital of the Company as are necessary to accomplish the Company's purposes.

2.2 ADDITIONAL CAPITAL CONTRIBUTIONS. The Member may make such additional contributions to the capital of the Company as the Member determines are necessary in its sole and absolute discretion to pay when due the obligations and expenses of the Company or to otherwise accomplish the Company's purpose. This provision shall not operate for the benefit of or be enforceable by any creditors of the Company or any other third parties.

## ARTICLE 3

### MANAGEMENT

3.1 MANAGEMENT BY MEMBER. The business and affairs of the Company will be managed exclusively by the Member. The Member will direct, manage, and control the business of the Company and will have full and complete authority, power, and discretion to make any and all decisions and to do any and all things that the Member will deem to be reasonably required to accomplish the purpose and business of the Company.

3.2 MANAGEMENT POWERS AND RESPONSIBILITIES. Without limiting the generality of Section 3.1, the Member will have the power and authority on behalf of the Company:

(a) To sell property to or acquire property from any person as the Member may determine. The fact that the Member is directly or indirectly affiliated or connected with any such person will not prohibit the Member from dealing with that person;

(b) To open from time to time bank accounts in the name of the Company and to designate and remove from time to time, at its discretion, all signatories on such bank accounts;

(c) To borrow money from banks, other lending institutions, individuals, the Member, or affiliates of the Member on such terms as it deems appropriate, and in connection therewith, to hypothecate, encumber, and grant security interests in the assets of the Company to secure repayment of the borrowed sums;

(d) To purchase liability and other insurance to protect the Company's property and business;

(e) To hold and own any Company real and/or personal properties in the name of the Company;

(f) To invest any Company funds (by way of example, but not limitation) in time deposits, short-term governmental obligations, commercial paper, or other investments;

(g) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan so long as such disposition does not violate or otherwise cause a default under any other agreement to which the Company may be bound;

(h) To execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes, and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, partnership agreements, and any other instruments or documents necessary, in the opinion of the Member, to the business of the Company;

(i) To employ accountants, legal counsel, managing agents, or other experts to perform services for the Company and to compensate them from Company funds;

(j) To make an assignment for the benefit of creditors of the Company, file a voluntary petition in bankruptcy, or appoint a receiver for the Company;

(k) To enter into any and all other agreements on behalf of the Company with any other person or entity for any purpose, in such forms as the Member may approve; and

(l) To do and perform all other lawful acts as may be necessary or appropriate to the conduct of the Company's business.

**3.3 AUTHORITY TO BIND THE COMPANY.** Unless authorized in writing to do so by this Agreement or by the Member, no agent or employee of the Company will have any power or authority to bind the Company in any way, to pledge its credit or to render it liable for any purpose.

**3.4 MEMBER HAS NO EXCLUSIVE DUTY TO COMPANY.** The Member will not be required to manage the Company as its sole and exclusive function. The Member may have other business interests and may engage in other activities in addition to those relating to the Company. The Company will not have any right, by virtue of this Agreement, to share or participate in such other activities of the Member or to the income or proceeds derived therefrom.

3.5 **RECORDS.** At the expense of the Company, the Member will maintain the following records required to be maintained by Section 29-607 of the Act, or any successor provision thereto, at the Company's registered office:

(a) The full name and last known business or mailing address of the Member;

(b) A copy of the Articles of Organization of the Company and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;

(c) Copies of the Company's currently effective written Operating Agreement and all amendments thereto, copies of any prior written Operating Agreement no longer in effect, and copies of any writings permitted or required with respect to the Member's obligation to contribute cash, property, or services;

(d) Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(e) Copies of financial statements of the Company, if any, for the three most recent years;

(f) Minutes of every annual, special, and court-ordered meeting, if any; and

(g) Any written consents obtained from the Member for actions taken by the Member without a meeting.

3.6 **TAX RETURNS AND ELECTIONS.** The Member will at the expense of the Company cause the preparation and timely filing of all federal, state and local tax returns required to be filed by the Company, if any. All elections permitted to be made by the Company under federal, state or local law will be made by the Member in its sole discretion.

3.7 **EXCULPATION OF MEMBER.** Any act or the failure to do any act by the Member, or any shareholder, director, officer or employee of the Member (collectively the "Indemnified Parties"), the effect of which results in loss or damage to the Company, will not give rise to any liability to the Member or the Indemnified Parties, if such act or failure to act is done in good faith to promote the best interest of the Company or is done pursuant to advice of independent legal counsel, accountants or other experts selected, engaged or retained by the Member with reasonable care. The preceding sentence will not relieve any person of liability for gross negligence, bad faith, dishonesty or misappropriation of Company assets.

3.8 **INDEMNIFICATION OF MEMBER; INSURANCE.** The Company will, solely from Company assets, indemnify and hold the Member and the Indemnified Parties harmless from and against any loss, cost, damage, liability, injury or expense (including but not limited to attorneys' fees and disbursements) suffered or sustained by the Member and the

Indemnified Parties by reason of any acts, omissions or alleged acts or omissions arising out of activities on behalf of the Company or in furtherance of the interests of the Company, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim; provided that the acts or omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based were not performed or omitted as a result of gross negligence, bad faith, dishonesty or misappropriation of Company assets. The Company will also have the power to purchase and maintain insurance on behalf of the Member and the Indemnified Parties against any liability asserted against the Member and the Indemnified Parties and incurred by the Member and the Indemnified Parties in any such capacity or arising out of their status as a Member or an Indemnified Party, whether or not the Company would have the power to indemnify the Member or the Indemnified Party against such liability under the provisions of this Section 3.8 or applicable law.

#### ARTICLE 4

##### MEMBERS

4.1 LIMITATION OF LIABILITY. The Member's liability for the debts and obligations of the Company will be limited as set forth in Section 29-651 of the Act, or any successor provision thereto, and other applicable law.

4.2 MEETINGS OF THE MEMBER. There will be no required annual meeting by the Member. However, special meetings by the Member, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Member.

4.3 ACTION BY MEMBER WITHOUT A MEETING. Action required or permitted to be taken at a meeting of the Member may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by the Member.

#### ARTICLE 5

##### DISTRIBUTIONS AND TAX CLASSIFICATION

5.1 DISTRIBUTIONS PRIOR TO LIQUIDATION. Prior to the dissolution of the Company and the commencement of the liquidation of its assets and winding up of its affairs, the Member, promptly following the end of its fiscal year and at such other times as it may deem appropriate, will determine and distribute the Company's "net available cash flow" to the Member. For purposes of this Agreement, "net available cash flow" means the excess of gross cash receipts (exclusive of initial and additional capital contributions and, except to the extent the Member determines otherwise, proceeds received from any borrowings by the Company) over cash disbursements, without deduction for depreciation, cost recovery deductions and other non-cash charges, for (a) all operating costs, (b) all principal and interest payments on debts (including payments of Member loans), (c) all asset acquisition costs and

capital costs necessary for the maintenance, repair and improvement of the Company's assets, and (d) reasonable reserves, as determined by the Member.

**5.2 DISTRIBUTIONS IN LIQUIDATION.** Following the dissolution of the Company and the commencement of winding up and the liquidation of its assets, all distributions to the Member will be governed by Article 7.

**5.3 TAX CLASSIFICATION.** Solely for federal, state and local income tax purposes, as long as the Member is the sole member of the Company, the Member intends that the Company be treated either as a branch or division of the Member or disregarded. The Member will file all necessary or appropriate forms in accordance with such tax classification.

## **ARTICLE 6**

### **ADMISSIONS**

No person will be admitted as a member of the Company after the date of formation of the Company without the written consent or approval of the Member. Upon admission, the members will amend this Agreement to reflect the admission of the new member.

## **ARTICLE 7**

### **DISSOLUTION AND TERMINATION**

**7.1 DISSOLUTION.** The Company will dissolve upon the first to occur of any of the following events:

- (a) The written election of the Member any time; or
- (b) The entry of a decree of dissolution under Section 29-785 of the Act.

Unless otherwise required by the Act, the occurrence of an event of withdrawal (as defined in Section 29-733 of the Act) with respect to the Member will not cause a dissolution of the Company.

**7.2 NOTICE OF WINDING UP.** Promptly following the dissolution of the Company, the Member will cause a Notice of Winding Up to be filed with the Arizona Corporation Commission in accordance with the Act.

**7.3 LIQUIDATION, WINDING UP AND DISTRIBUTION OF ASSETS.** Following an event that causes a dissolution of the Company, the Member will proceed to liquidate the Company's assets and properties, discharge the Company's obligations, and wind up the Company's business and affairs as promptly as is consistent with obtaining the fair value of the Company's assets and properties. The proceeds of liquidation of the Company's assets, to the extent sufficient therefor, will be applied and distributed as follows:

(a) First, to the payment and discharge of all of the Company's debts and liabilities except those owing to the Member or to the establishment of any reasonable reserves for contingent or unliquidated debts and liabilities;

(b) Second, to the payment of any debts and liabilities owing to the Member; and

(c) Third, to the Member.

Notwithstanding anything in this Section 7.3 to the contrary, in lieu of liquidating all of the Company's assets and properties, the Member may make in-kind liquidating distributions of the Company's assets and properties in satisfaction of its liquidation priorities set forth in Sections 7.3(b) and 7.3(c).

**7.4 DEFICIT CAPITAL ACCOUNT.** Except as otherwise required by the Act, the Member will have no obligation to contribute or advance any funds or other property to the Company by reason of the fact that the Company's assets and properties are not sufficient to pay all of the Company's debts and obligations upon completion of winding up or at any other time.

**7.5 ARTICLES OF TERMINATION.** When all of the remaining property and assets have been applied and distributed in accordance with Section 7.3, the Member will cause Articles of Termination to be executed and filed with the Arizona Corporation Commission in accordance with the Act.

## ARTICLE 8

### MISCELLANEOUS PROVISIONS

**8.1 APPLICATION OF ARIZONA LAW.** This Agreement will be construed and enforced in accordance with the laws of the State of Arizona.

**8.2 AMENDMENTS.** This Agreement may not be amended except by written instrument executed by the Member.

**8.3 HEADINGS.** The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision of this Agreement.

**8.4 SEVERABILITY.** If any provision of this Agreement or the application of any provision of this Agreement to any person or circumstance will be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application the remainder of this Agreement will not be affected and will be enforceable to the fullest extent permitted by law.



8.5 SUCCESSORS AND ASSIGNS. Each and all of the covenants, terms, provisions, and agreements herein contained will be binding upon and inure to the benefit of the Member and, to the extent permitted by this Agreement and by applicable law, its successors and assigns.

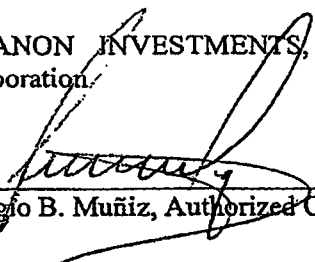
8.6 CREDITORS AND OTHER THIRD PARTIES. None of the provisions of this Agreement will be for the benefit of or enforceable by any creditor of the Member or the Company or by any other third party.

8.7 ENTIRE AGREEMENT; SUPERSEDURE. This Agreement constitutes the entire statement of the Member relating to the Company and supersedes all prior statements, contracts or agreements with respect to the subject matter of this Agreement, whether written or oral.

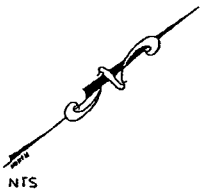
The undersigned has duly executed this Operating Agreement of Drake Switching Company, LLC as of the date first set forth above.

MEMBER:

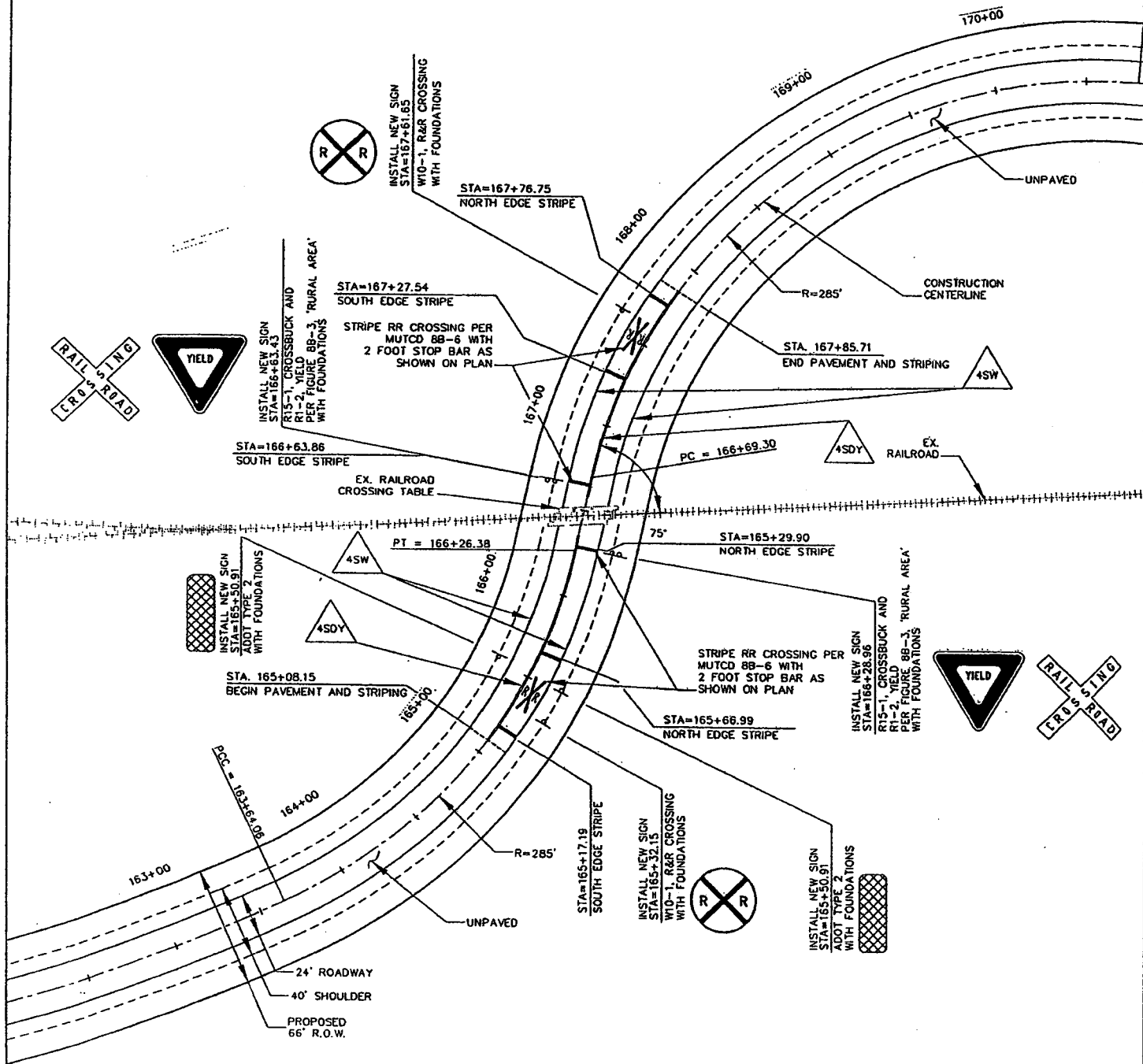
SKANON INVESTMENTS, INC., an Arizona corporation

  
Sergio B. Muñoz, Authorized Officer

## **EXHIBIT 3**



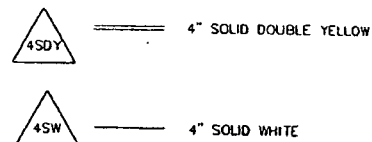
NTS



# SIGNAGE AND STRIPING EASTERLY RAILROAD CROSSING

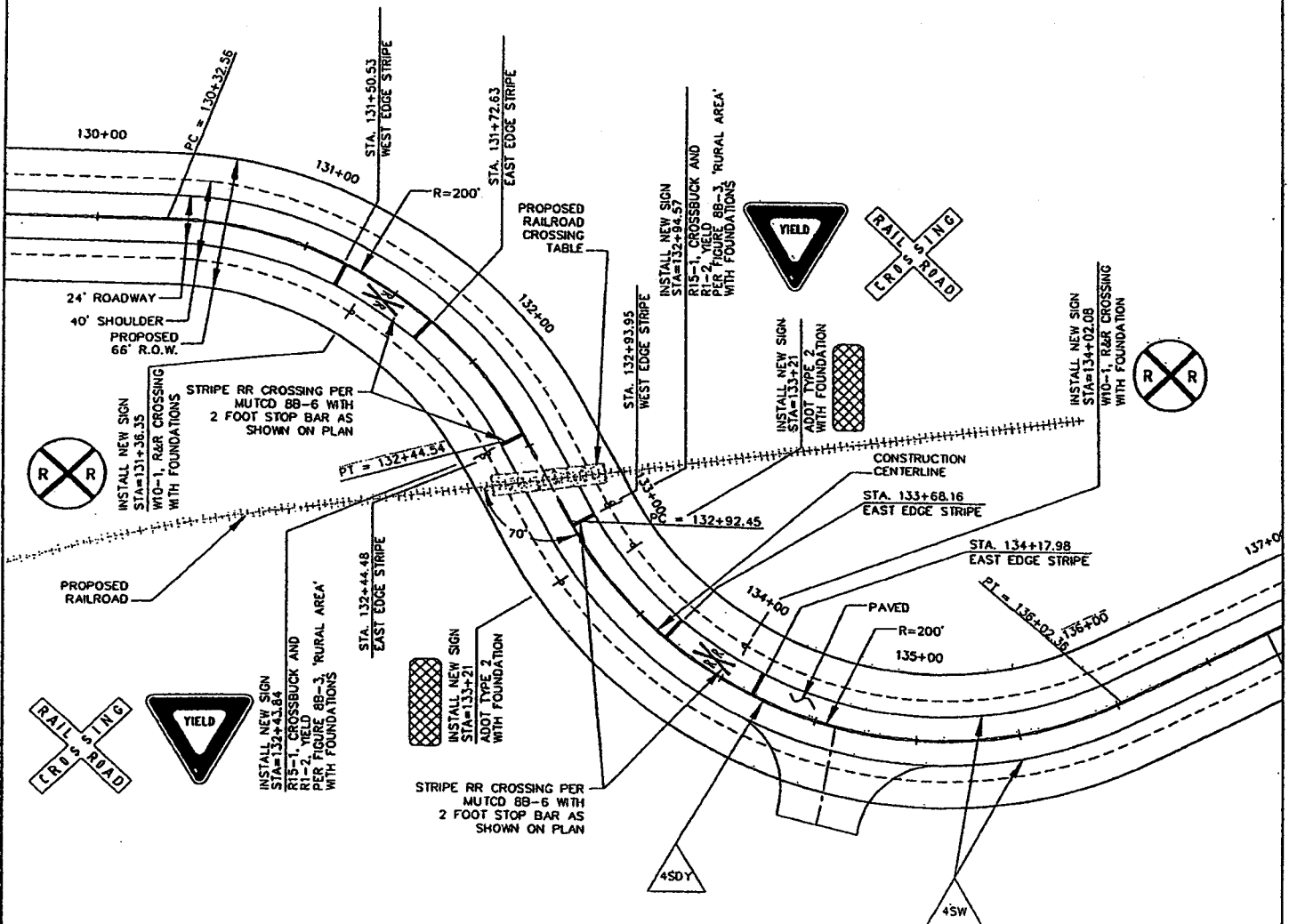
MARCH 19, 2010

## STRIPING LEGEND:



## **EXHIBIT 4**

NTS



**STRIPING LEGEND:**



4" SOLID DOUBLE YELLOW

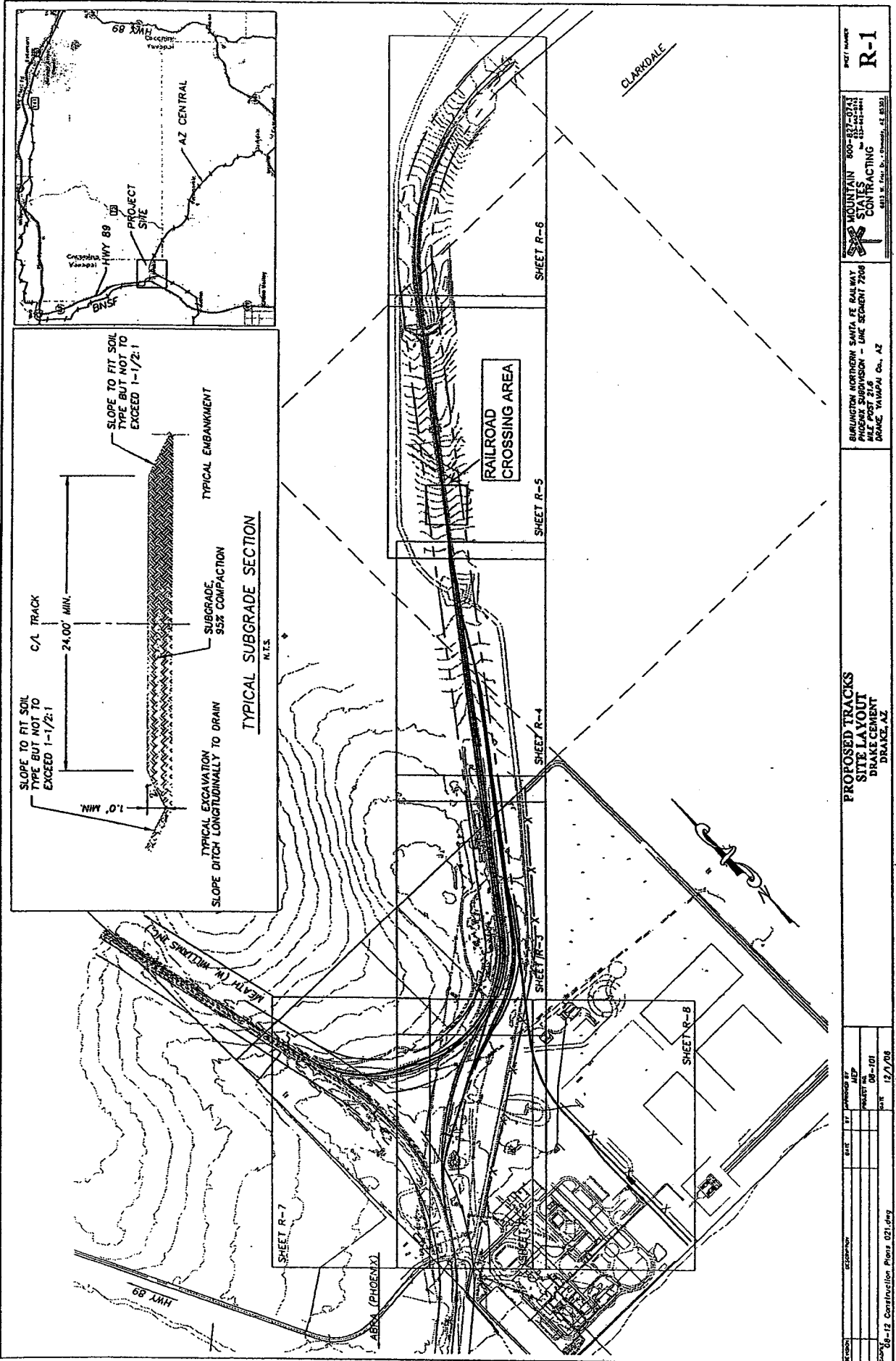


4" SOLID WHITE

**SIGNAGE AND STRIPING  
CENTER RAILROAD CROSSING**

MARCH 19, 2010

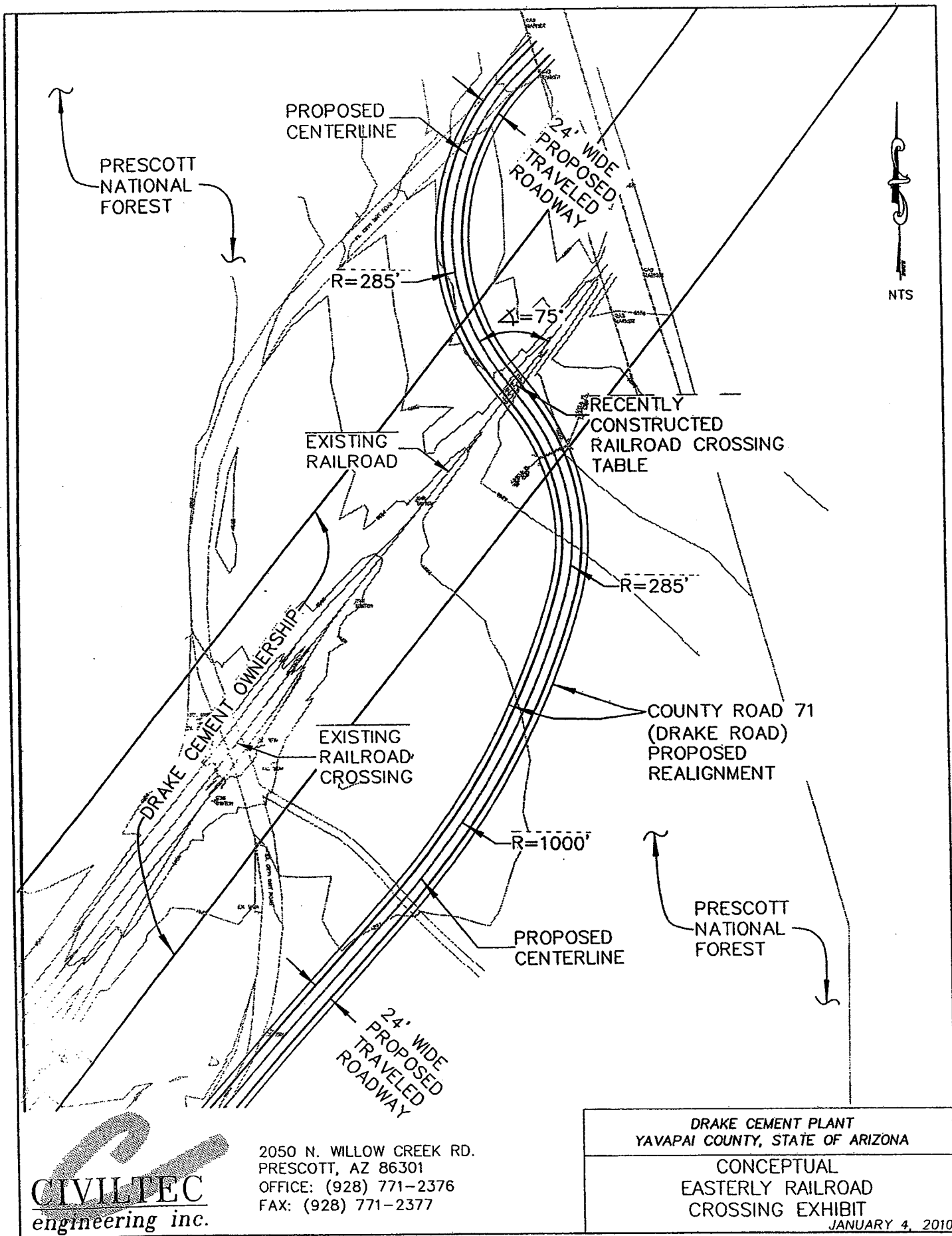
## **EXHIBIT 5**



SECTION 08-12 Construction Plans 021.dwg		DATE 12/1/03	DRAWN BY MFP	CHECKED BY 08-01	PROJECT 08-01	SHEET 08-01	DATE 12/1/03	PROPOSED TRACKS SITE LAYOUT DRAINAGE DRAC, AZ	BRUNTON NORTHERN SANTA FE RAILWAY BRUNTON DIVISION - LINE SEGMENT 7200 MILE POST 21.8 DRAC, YAVAPAI Co., AZ	SMO MOUNTAIN 800-837-0743 1515 N. 10TH AVE. SUITE 100 PHOENIX, AZ 85016 SMO MOUNTAIN CONTRACTING 4813 N. 10TH AVE. - PHOENIX, AZ 85018	SHEET NUMBER <b>R-1</b>
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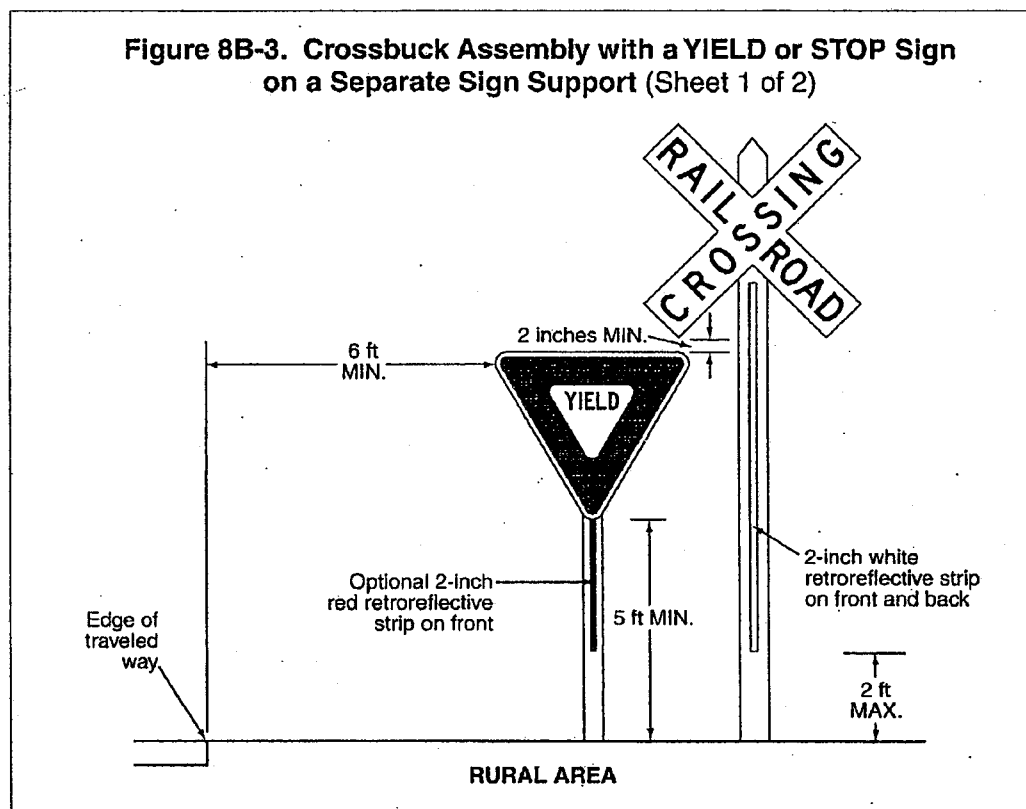
## **EXHIBIT 6**

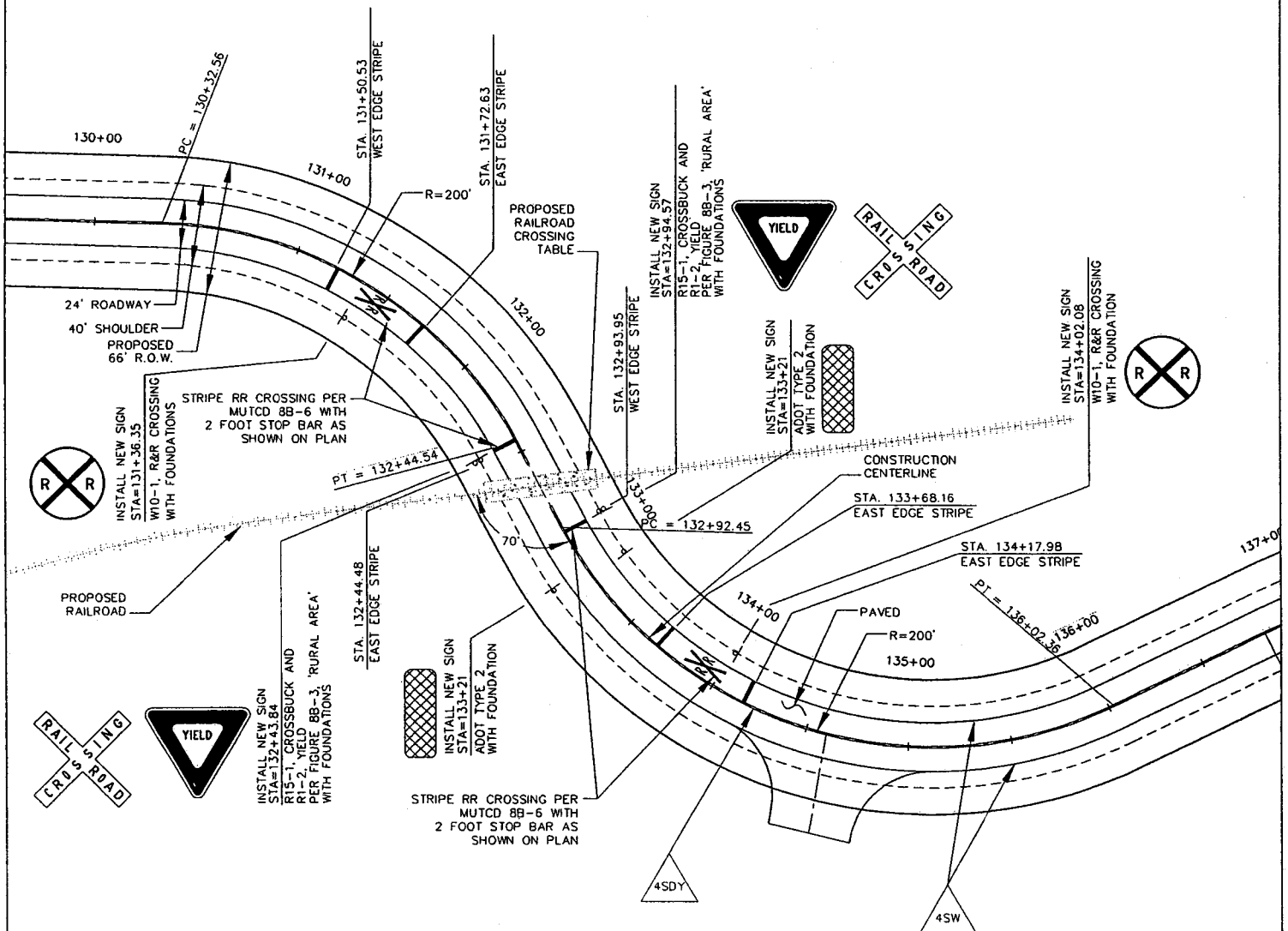
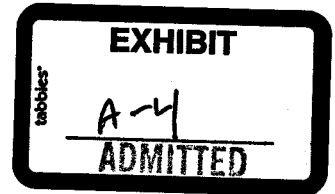
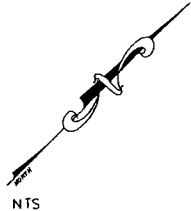




**EXHIBIT 7**

Figure 8B-3. Crossbuck Assembly with a YIELD or STOP Sign  
on a Separate Sign Support (Sheet 1 of 2)





SIGNAGE AND STRIPING  
CENTER RAILROAD CROSSING  
MARCH 19, 2010

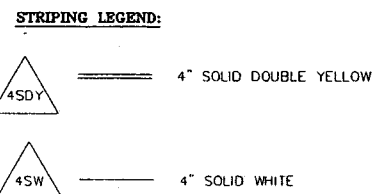




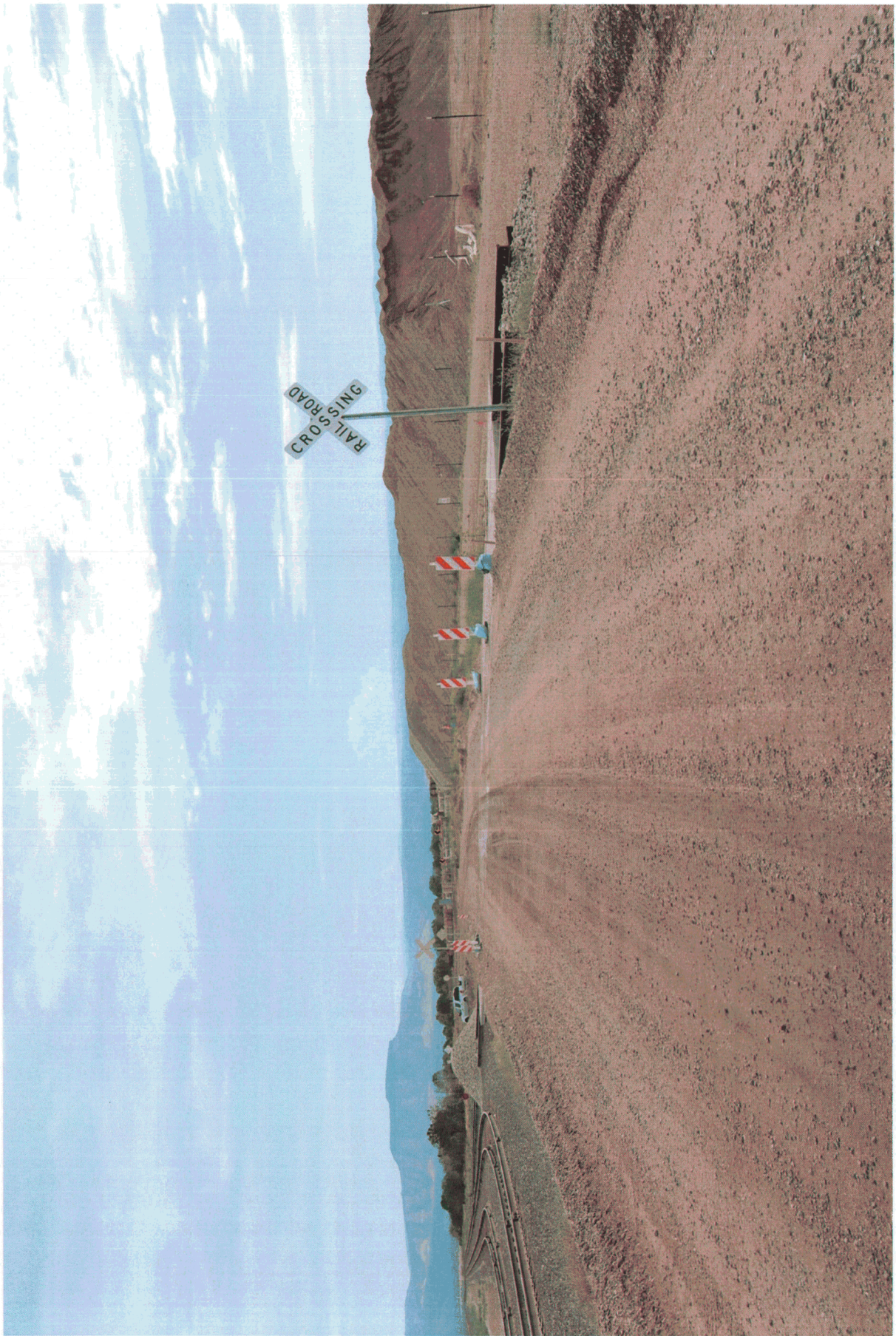


EXHIBIT  
A-5  
ADMITTED























July 6, 2010

To Whom It May Concern:

As a Sierra Club leader, I have been meeting with Cliff Ayers, COO of Drake Cement, bimonthly for two years.

Drake Cement demonstrates that good business and environmental stewardship go together. The company has picked up tons of trash from the Prescott National Forest lands surrounding the plant site. They have hauled hundreds of tons of car-sized boulders to line trailheads and block illegal OHV access to the Verde River.

Drake has funded studies of Mercury pollution in Verde River fish to prove that their operations will not impact the endangered native fishery.

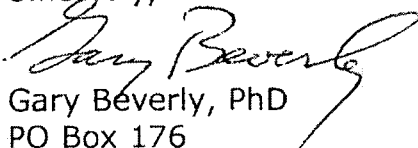
Drake is in the midst of purchasing property along the river to use in a land exchange with the Forest Service. When completed, this land exchange will tremendously improve the protection of the upper Verde River.

In all my conversations with Ayers, he has been accurate and truthful, and he has done what he promised.

Unusual as it may seem for a conservationist to partner with a major extractive industry, I can without reservation recommend Drake Cement as an environmentally responsible corporation that acts reputably and reliably.

If you need any further information, please contact me.

Sincerely,



Gary Beverly, PhD  
PO Box 176  
Chino Valley, AZ 86323  
gbverde@cableone.net  
928-636-2638 (home)  
928-308-1003 (cell)

EXHIBIT

tabbies

A-7

# YAVAPAI COUNTY BOARD OF SUPERVISORS



**CAROL SPRINGER**  
Supervisor, District 1  
1015 Fair Street  
Prescott, AZ 86305  
(928) 771-3206  
[web.bos.district1@co.yavapai.az.us](mailto:web.bos.district1@co.yavapai.az.us)

July 13, 2010

The Honorable Kristen K. Mayes, Chairman  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

**Re: Drake Cement, LLC**

Dear Commissioner Mayes:

Yavapai County has been working with Drake Cement, LLC since 2003 to construct a new cement plant in Drake, Arizona. Drake is located 110 miles north of Phoenix and 35 miles north of Prescott and is idyllic for cement production because of the limestone, the water supply, access to Interstate 40, high-voltage power lines and the rail access.

In today's economy Drake is a bright spot and has truly been a benefit to the economy in Yavapai County. From 2004 to 2008 Drake has contracted with local contractors and consultants. In May 2008, Drake started construction of their cement facility and employed over 600 people, achieving 70% local hire.

Drake has donated people and resources to assist many groups and organizations throughout Yavapai County. Drake has worked with the Prescott National Forest, Yavapai County Public Works Roads Department, BNSF, local schools and the Sierra Club. Led by Chief Operating Officer Cliff Ayres, long time resident of Northern Arizona, Drake is committed to people, values, technology and the environment.

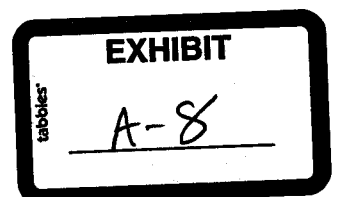
The rail improvements provided Drake including the proposed crossing of County Road 71 will bring economic development to this part of the Yavapai County. Drake is in discussions today with other business interests due to the rail opportunities.

Yavapai County Board of Supervisors supports Drake Cement and all business in our county and thanks them for their values and contributions to our economy and citizens.

Sincerely,

  
Carol Springer

CS:blt



## STAFF MEMORANDUM

To: THE COMMISSION

RECEIVED

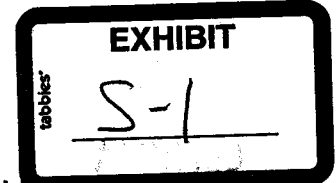
From: Steven M. Olea  
Interim Director  
Safety Division

ORIGINAL

2010 JUN 22 P 4: 22

AZ CORP COMMISSION  
DOCKET CONTROL

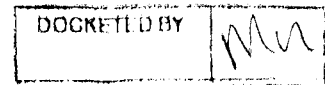
Date: June 23, 2010



Arizona Corporation Commission

DOCKETED

JUN 22 2010



RE: IN THE MATTER OF THE APPLICATION OF DRAKE CEMENT, LLC TO ESTABLISH A NEW RAILROAD CROSSING ON YAVAPAI COUNTY ROAD 71 NEAR DRAKE, YAVAPAI COUNTY, ARIZONA, USDOT NO. 933-885-T.

DOCKET NO. RR-20736A-10-0140

### Background

On April 9, 2010, Drake Cement, LLC ("Company" or "Drake") filed with the Arizona Corporation Commission ("Commission") an application for the establishment of a new public at-grade railroad crossing on Yavapai County Road (CR) 71 (also known as Drake Road) in the vicinity of Drake, Yavapai County ("County"), Arizona, USDOT No. 933-885-T. The construction of the rail spur across CR71 will serve the Company's cement operations.

### Drake Cement, LLC

The Company has entered into an agreement with the Burlington Northern Santa Fe Railway ("BNSF") to bring coal to the Drake site. Coal is needed to fuel the new plant's kiln that will convert the necessary raw materials (e.g. limestone, bauxite, iron ore, etc.) into clinker, which will eventually lead to the production of cement. The Company has projected the production of approximately 660,000 short tons of cement annually, and to complete this, it will be necessary to transport approximately 800 cars of coal per annum, or 15 rail cars per week. In order to move the coal cars onto its premises, Drake will operate a railcar mover and will move a maximum of seven railcars at a time (**see Exhibit A**). The Company has the capacity of holding 12 railcars at a time within its plant site, meaning that only 2 transits through the crossing will be necessary per week to handle the inbound raw materials. While the Company does not have immediate plans to ship cement out of the plant by rail, in the event that the economics support using rail to ship cement out, it is possible that another 2 transits for the outbound cement sold would occur each week. In full production, the Company will operate 24 hours, 7 days per week. The Company predicts in today's economy that they will operate for 3 months, and then will cease operations for 4 months. During the months of no operations, the crossing would be inactive.

### Drake Switching Company, LLC

In order to best serve the Company's railroad and switching needs, the Company purchased additional land and rail infrastructure from the Arizona Central Railroad ("AZCR"), adjacent to the cement plant operation. In February, 2010 the Company filed for an acquisition exemption with the Surface Transportation Board ("STB") to be considered as a non-railroad

company purchasing railroad right-of-way along with existing track owned by AZCR. A second filing was made by Drake Switching, LLC at the same time, requesting that the STB grant Drake Switching, LLC, an exemption for its switching operations as a non-carrier. In March, 2010, the STB granted the Company and Drake Switching, LLC the two exemptions as requested.

### **BNSF Interchange**

After the land was acquired from the AZCR, a connection to the nearby BNSF tracks was constructed so that rail shipments could be easily interchanged. Additionally, storage tracks were constructed to allow the Company to store loaded and empty rail cars to use as needed. The rail cars will be moved about using a railcar mover rather than a conventional locomotive.

### **Drake Switching Company, LLC Personnel**

Railroad Industries Incorporated, a rail consulting firm was hired to help the Company with its rail and switching operations. The primary consultant working with the Company is Gary V. Hunter who has 34 years of experience in railroad operations that includes positions as transportation director for a Class I railroad. Additionally, he has prior experience in terminal and switching operations as well as a director for a shortline railroad. Although the consultant will not be an employee, he will be consulting the Company on all facets of railroad operation and compliance.

The daily rail operations will be overseen by the Company's traffic manager. The traffic manager has a background in planning, coordinating and scheduling railcar shipments to meet the customer's needs. Including the traffic manager, Drake employs a total of five personnel trained in the federal Railroad Worker Protection ("RWP") regulations along with railcar mover certification. The railcar certification is awarded by the manufacturer of the railcar mover after rigorous training. Among the employees working under the supervision of the traffic manager, is the traffic operator whose main responsibility will be the operation of the railcar mover. He has 7 years of experience as a locomotive engineer for a Class I railroad, along with a strong background in railroad operating rules. In addition to training in RWP regulations and certification as an operator of a railcar mover, he still maintains his federal locomotive engineer certification.

The remaining three other employees that will work in the rail operations serve as secondary operators of the railcar mover, flagman and as track maintenance personnel. All three of these employees have been trained and certified in RWP regulations and railcar mover operations. While all three employees have been recently trained and certified they have no prior rail experience.

### **Geographical Information**

The following is a break down of the proposed new crossing in this application, including information about the crossing that was provided to the Commission's Railroad Safety Section Staff ("Staff") by the County and the Company. The proposed railroad crossing will be located on CR 71 approximately 2 miles northeast of State Highway Route (SR) 89 in the northeast corner of the County which is surrounded by the Prescott National Forest. Drake is an unincorporated community located within the County (see Exhibit B). As of 2007, the County's

population was estimated to be 212,635, an increase of 45,118 people since the 2000 census count of 167,517. Drake's economy is based on the mining and shipping of decorative flagstone.

### **CR71 (Drake Road)**

From SR89 traveling east about 1.8 miles, CR71 is a paved two lane roadway; it then becomes an unimproved gravel and dirt roadway that extends the entire length of the roadway, approximately 40 miles. The proposed new at-grade crossing will cross CR71 approximately .4 of a mile east of an existing BNSF at-grade crossing. The Company proposes the installation of the following passive warning devices at the proposed new at-grade crossing:

- railroad cross bucks along with Yield signs posted for both directions of travel at the crossing per the Manual on Uniform Traffic Control Devices ("MUTCD") (see **Exhibit C**)
- advanced railroad crossing warning signs, per MUTCD posted on the roadway in both directions
- skewed angle warning signs per MUTCD posted on the roadway in both directions indicating the skewed angle in which the tracks will cross the roadway
- asphalt paving on the east and west approaches to the proposed new crossing that will include pavement markings indicating a railroad crossing per MUTCD
- two flagman, one for each direction of travel stationed at the crossing during travel through the crossing
- posting of the USDOT inventory number at the crossing

The proposed measures are consistent with safety measures employed at similar rural at-grade crossings in the State. The estimated cost of the proposed new at-grade railroad crossing is \$500,000. The Company will fund the entire crossing project.

In addition, a gate will be constructed just off the right-of-way of CR71 on the Company's site, situated perpendicular to the rail spur as it enters the cement plant site. The gate will be 24 feet wide and 6 feet high and when closed and locked will block rail access into and out of the plant (see **Exhibit D**).

### **FHWA Guidelines Regarding The Consideration for Automatic Warning Devices**

The Federal Highway Administration ("FHWA") Railroad-Highway Grade Crossing Handbook (Revised Second Edition August 2007) provides nine criteria for determining whether a highway-rail crossing should be considered for automatic gates and lights. The Crossing Handbook indicates that automatic gates and lights should be considered whenever one or more of the nine conditions are met.

The nine criteria are applied to this crossing application as follows:

Inadequate clearing sight distance exists in one or more approach quadrants	Proposed new crossing would meet the criteria	No
Regularly scheduled passenger trains operate in close proximity to an industrial facility, e.g. stone quarries, cement plants, oil refineries, chemical plants	Proposed new crossing would meet the criteria	No
In close proximity to schools or industrial plants where there is substantially higher than normal usage by school buses or trucks carrying hazardous materials	Proposed new crossing would meet the criteria	No
Multiple main or running tracks through the crossing	Proposed new crossing would meet the criteria	No
In close proximity to a highway intersection or other highway-rail crossing and the traffic control devices at the nearby intersection cause traffic to queue across the tracks	Proposed new crossing would meet the criteria	No
An average of 20 or more trains a day	Proposed new crossing would meet the criteria	No
Posted highway speed exceeds 40 mph in urban areas or exceeds 55 mph in rural areas	Proposed new crossing would meet the criteria	No
Annual Average Daily Traffic (AADT) exceeds 2,000 in urban areas or 500 in rural areas	Proposed new crossing would meet the criteria	No
The crossing exposure (number of trains x number of AADT) exceeds 5,000 in urban areas or 4,000 in rural areas.	Proposed new crossing would meet the criteria	No

It should be noted that the criteria identified in the FHWA material are not mandates, but guidelines established by the FHWA. Staff has utilized the FHWA Guidelines to determine the need for automatic warning devices at this crossing. Based on proposed conditions, the crossing in this application would meet none of the nine criteria for consideration of automatic warning devices.

### **Traffic Data**

Traffic data for CR71 was provided by the County. The County last took traffic counts on March 3, 2010. They performed counts at two different locations close to the new Company facility. The first Average Daily Traffic ("ADT") count was taken between SR 89, and the new facility, encompassing the area of the proposed new grade crossing which was 1,336 vehicles per day ("vpd"). The second count was taken to the northeast of the proposed new grade crossing and was 221 vpd. Staff believes that the discrepancy in traffic counts stems from the present increased amount of construction traffic coming and going from the cement plant. Staff believes that once the plant is completed the ADT from the March 3, 2010 count will be greatly reduced. A traffic count taken in June 2006 in the same vicinity produced a count of 516 vpd. Due to the low traffic volumes no Level of Service ("LOS") was provided.



The posted speed limit on CR71 is 25 mph. There are no alternative routes from this crossing. Continuing east from the proposed crossing on CR71 the roadway goes to Perkinsville and then onto Jerome a total of approximately 40 miles. Traveling west about 2 miles on CR71 from the proposed crossing a motorist would return to SR89.

### **Train Data**

Data provided by Drake Cement regarding train movements through the new crossing are as follows:

*Drake anticipates there will be up to 4 train movements through the crossing per week with a maximum of 7 railcars per movement. The speed will be 5 miles per hour (walking speed) and the type of movements will be all freight.*

### **Schools and Bus Routes**

There are no schools located within a three mile radius of the proposed new crossing. There will be no school buses crossing daily at the proposed crossing.

### **Hospitals**

There are no hospitals located within three miles of the proposed crossing. As such, the crossing is not expected to be used extensively by emergency service vehicles.

### **Hazardous Materials**

The Company gave the following response when asked about hazardous materials crossing this crossing:

*No vehicles that carry hazardous materials will utilize the proposed crossing, except fuel deliveries. Fuel deliveries will occur approximately once per month.*

### **Zoning**

Staff requested the Company provide information regarding the type of zoning in areas adjacent to the crossing. The following was its response:

*Prescott National Forest surrounds Drake's property within the 3 miles (see attached). This area is zoned by the County as RCU2A -- residential lots more than 2 acres.*

### **Spur Lines**

No spur lines have been removed from within a three mile radius of the proposed new grade crossing within the last five years.

### **FHWA Guidelines Regarding Grade Separation**

The FHWA Railroad-Highway Grade Crossing Handbook (Revised Second Edition August 2007) provides nine criteria for determining whether highway-rail crossings should be considered for grade separation or otherwise eliminated across the railroad right of way. The

Crossing Handbook indicates that grade separation or crossing elimination should be considered whenever one or more of the nine conditions are met. The nine criteria are applied to this crossing application as follows:

		CR71
The highway is a part of the designated Interstate Highway System	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
The highway is otherwise designed to have full controlled access	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
The posted highway speed equals or exceeds 70 mph	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
AADT exceeds 100,000 in urban areas or 50,000 in rural areas	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
Maximum authorized train speed exceeds 110 mph	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
An average of 150 or more trains per day or 300 million gross tons/year	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250k in rural; or passenger train crossing exposure exceeds 800k in urban or 200k in rural	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No
Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	N/A <sup>1</sup>
Vehicle delay exceeds 40 vehicle hours per day	Crossing Currently meets the criteria	No
	Crossing meets the criteria by 2030	No

<sup>1</sup> N/A = Not Applicable

### **Vehicular Delays at Crossings**

Due to the low ADT's and the minimal train traffic, no traffic delay was performed. Another commonly used measure outlined in the FHWA Guidelines; the so-called Crossing Exposure Index (which is simply the product of the number of trains per day multiplied by the number of vehicles crossing daily) is not currently met at this crossing. It should be noted that the criteria identified in the FHWA material are not mandates, but guidelines established by the FHWA, which serve to alert those having jurisdiction that potential problems may arise.

### **Grade Separation**

With regard to grade separating this crossing, the Company gave the following response:

*Grade separation was not considered when discussed with Yavapai County officials. Due to the relatively low ADT, as well as the configuration of the crossing to the cement plant and surrounding industrial buildings, a grade separated crossing would be virtually impossible to design and construct.*

Staff has utilized the FHWA Guidelines to determine the potential need for grade separation at this crossing. Based on proposed conditions, the crossing in this application would meet none of the nine criteria for consideration of grade separation.

### **Additional Staff Findings**

On October 13, 2009, a Staff inspector was performing a routine track inspection on the BNSF railroad adjacent to the Company facility. The inspector noticed a new at-grade crossing across CR71, just east of the existing BNSF mainline at-grade crossing. Photos of the newly constructed crossing were taken and the Railroad Safety Section supervisor was notified of the discovery (**see Exhibit E**). Staff was also notified by telephone that same day by the County's assistant engineer whose staff also discovered the new crossing. Staff was informed at that time by the County that the Company had submitted preliminary engineering for construction of a new crossing on CR71. After reviewing the preliminary engineering, the County returned comments to the Company stating that the County did not agree to the alignment of the proposed new crossing and would not approve the project at that time.

On October 20, 2009, Staff met on-site at Drake with representatives from the Company, County and Mountain States Rail Contracting, a firm hired by the Company to construct the subject crossing. The Company stated it was not aware of an approval from the Commission in order to construct the crossing, until the County informed Drake of the requirement. Staff presented a hand-out outlining the approval process at the Commission. The Company stated that an application for approval would be submitted in the near future.

Staff believes that the Company or its contractor constructed an at-grade crossing through CR71 without Commission approval, or County consent. On May 13, 2010, Staff issued its first set of data requests to the Company. Question BL 1.5 asks: Has the crossing being applied for in this application already been constructed? If yes why was Commission approval not obtained prior to the installation of the new crossing?

#### ***Response:***

*Rail has been constructed across the County road, but it will have to be relocated in order to accommodate plans approved by the County. Applicant will finalize construction of the crossing pursuant to plans approved by both Yavapai County and the Arizona Corporation Commission ("Commission"). Drake had been working with Yavapai County, during which time Drake became aware of the Commission's jurisdiction over public highway-rail crossings. Once it became aware that it required Commission approval for the establishment of a public crossing, Drake took the steps necessary to get the application for approval filed.*

On May, 26, 2010, Staff issued a second set of data requests in order to clarify questions asked in Staff's first set of data requests. Question BL 2.1 asks:

With reference to the response provided to BL 1.4 please clarify the following "There is no active crossing other than the one being applied for."

- a. Is there an inactive crossing at the location proposed for the current application?
- b. If yes, was the existing crossing approved by a Commission order and if not, by whom was the existing crossing constructed?
- c. If there is an existing crossing at the location, is Drake requesting approval for the construction of that crossing?

*Response:*

- a. *No, there is no inactive crossing located at the area proposed for the spur crossing included in the application. Due to a redesign in the realignment of CR71, the existing rail will be part of the overall rail spur leading to the cement plant. Because CR71 will be realigned, the new crossing will be located in an area where currently no rail line exists. However, there is existing rail that crosses CR71, which was constructed in conjunction with County approvals that has never been used.*
- b. *If the question is whether construction of the existing rail that crosses CR71 was ever approved by the Commission, the answer is no. As set forth in the background above, the rail and cement guards were constructed by Drake in conjunction with a realignment of CR71. It was not until after construction that Drake was informed by the County that Commission approval was necessary in order to construct and operate a public highway rail crossing for the spur.*
- c. *Drake is not requesting approval of the existing rail across CR71 because as set forth in the County Agreement, CR71 will be realigned. The crossing included in the application has not yet been constructed. The existing rail will become part of the overall rail spur once CR71 is realigned, and will no longer be an 'inactive' crossing as that term is used in these data requests.*

Staff has determined through data requests and on-site visits that the Company or a contractor for the Company constructed a new at-grade highway-rail crossing across CR71. Staff is uncertain of the exact date the construction took place but believes it was in the first or second week of October, 2009. Staff has further determined that the subject crossing was constructed without a Commission order. Arizona Revised Statute §40-337, gives the Commission exclusive power over railway crossings. Staff believes that the Company was not aware of the approval needed from the Commission when the subject crossing was constructed. The Company has never owned or operated a railroad company in Arizona. However, Staff does not believe that ignorance of Commission powers and requirements excuses the non-compliant actions.

Because of the non-compliant actions of the Company and/or its contractor, Staff is recommending the Company be required to do one of the following:

Make a donation in the amount of \$5,000 to the nonprofit organization Arizona Operation Lifesaver. Operation Lifesaver is a nationwide, non-profit public safety education and outreach program designed to eliminate collisions, deaths and injuries at rail crossings and railroad rights-of-way. Staff believes that a \$5,000 donation to Arizona Operation Lifesaver would have a meaningful impact on railroad safety in Arizona.

or

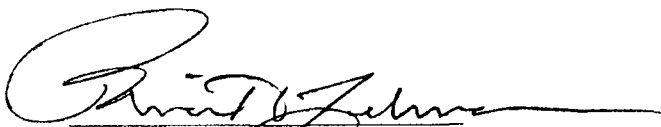
In the event that the Commission believes that a civil penalty would be more appropriate under the circumstances, Staff would recommend a penalty no greater than \$5,000 in light of this being a first violation by the Company.

**Staff Conclusions**

Staff believes that due to the low traffic volumes, and the small number of train crossings per week across the proposed crossing that the proposed signage and the passive warning devices along with flagman stationed on the roadway for each direction of travel will adequately protect the motoring public.

Staff has concluded that the rail crossing constructed across CR71 was constructed without Commission approval and it would be appropriate that the Company submit a donation of \$5,000 to Arizona Operation Lifesaver or pay a civil penalty in the amount of \$5,000.

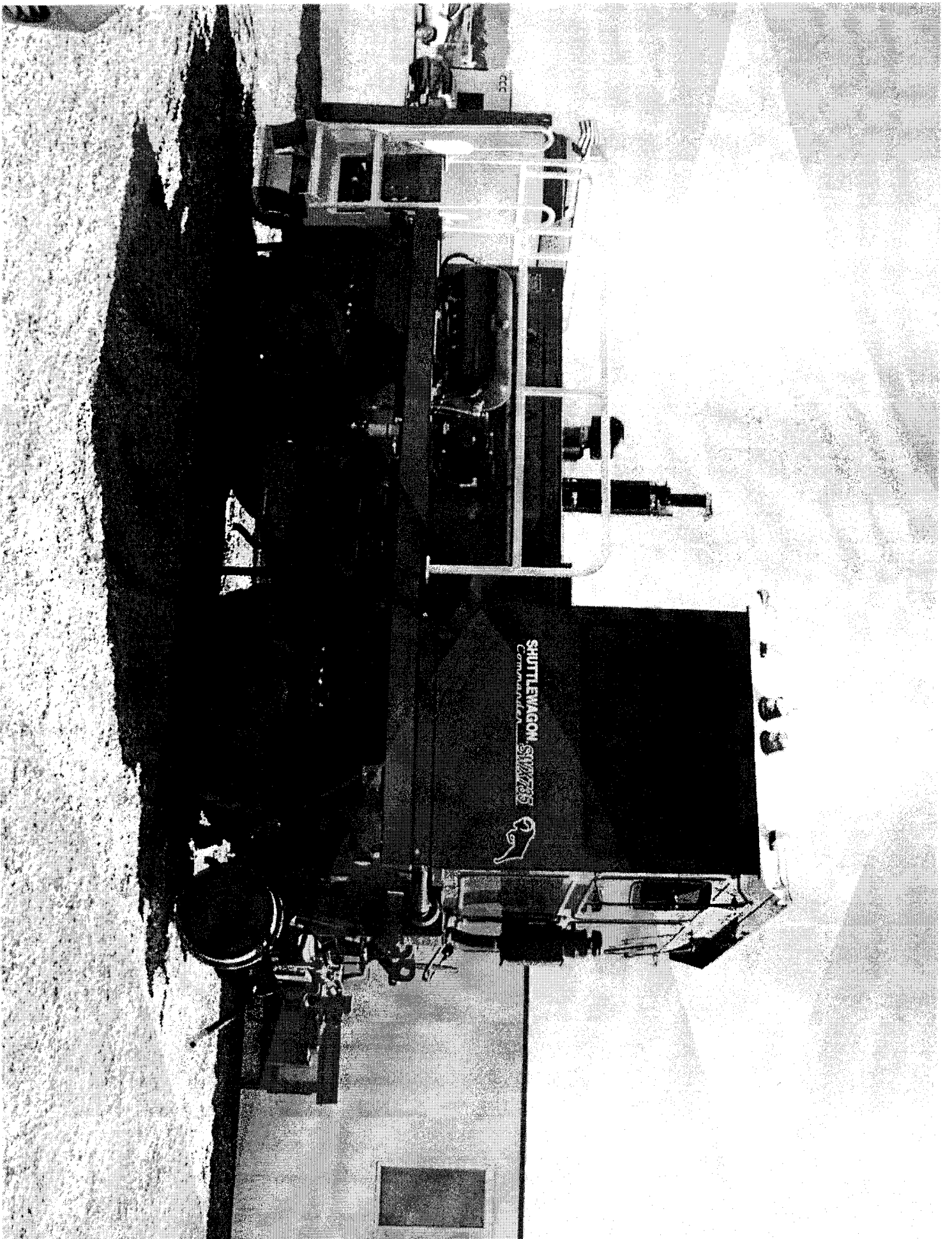
Having reviewed all applicable data, Staff supports Drake Cement, LLC's application. Staff believes that the measures proposed by Drake Cement are consistent with other similar at-grade crossings in the State and will provide for the public's safety. Therefore, Staff recommends approval of the Drake Cements application.



Brian H. Lehman  
Railroad Safety Supervisor  
Safety Division

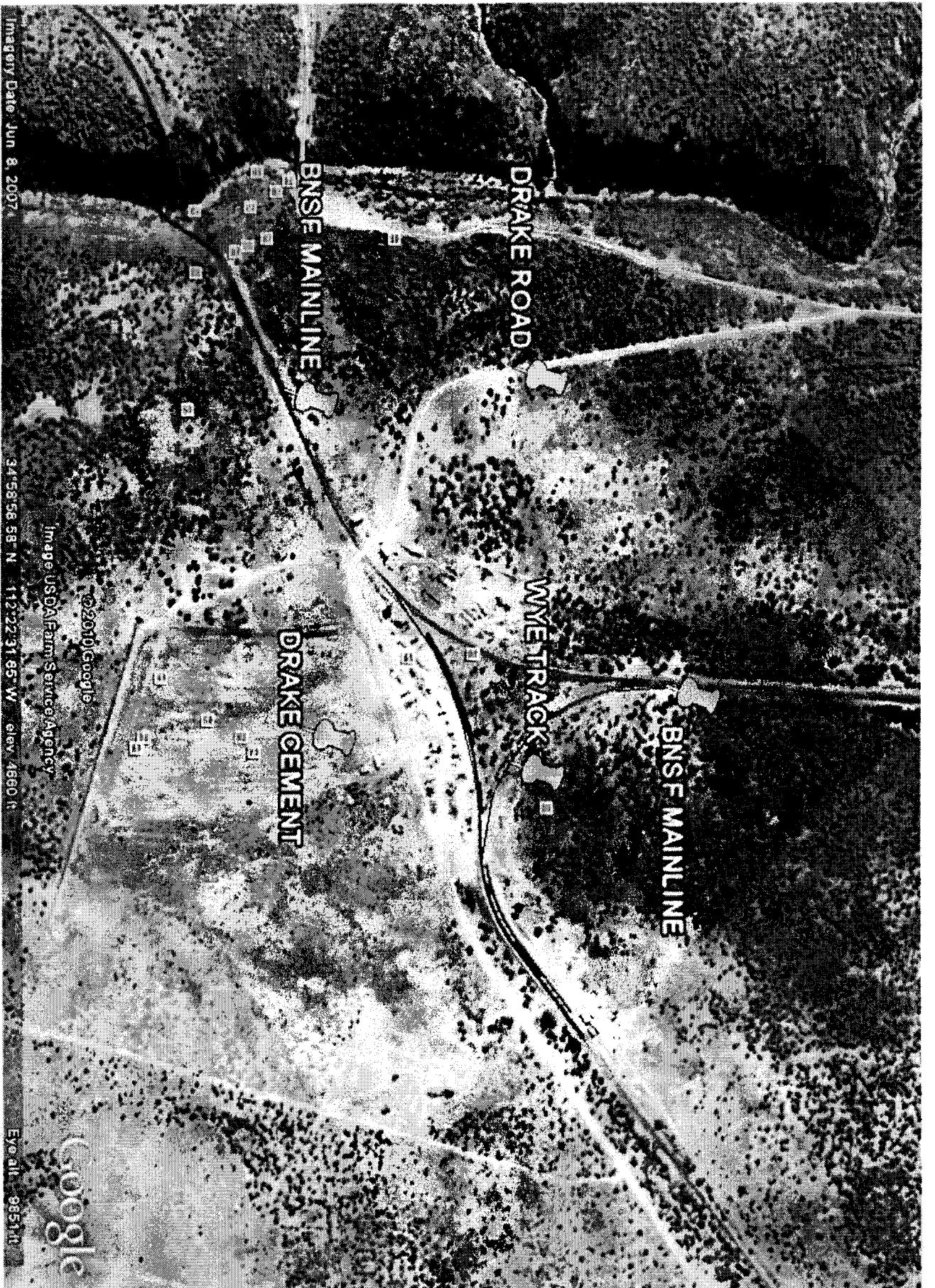
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# **Exhibit A**



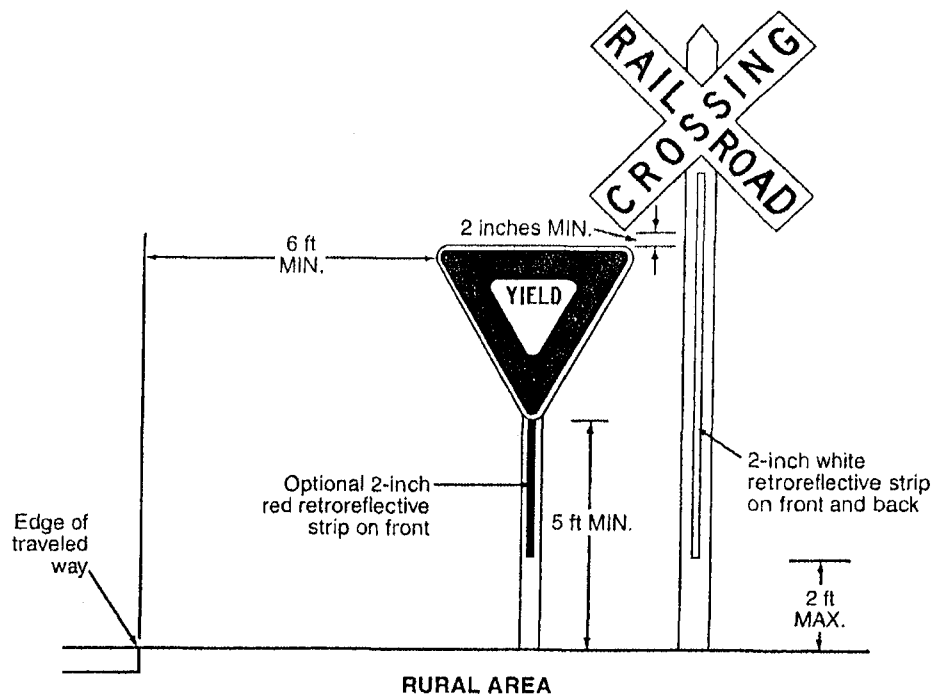
# **Exhibit B**





# **Exhibit C**

Figure 8B-3. Crossbuck Assembly with a YIELD or STOP Sign  
on a Separate Sign Support (Sheet 1 of 2)



# **Exhibit D**

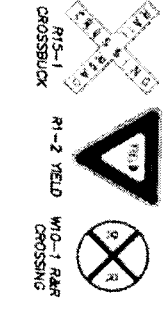
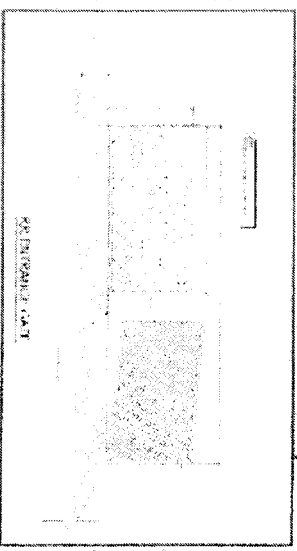
10-04 Construction Form 025.dwg  
 DATE 4/22/10  
 PROJECT 08-101  
 SHEET 4/22/10

**PROPOSED TRACKS  
 DRAKE CEMENT  
 DRAKE, AZ**

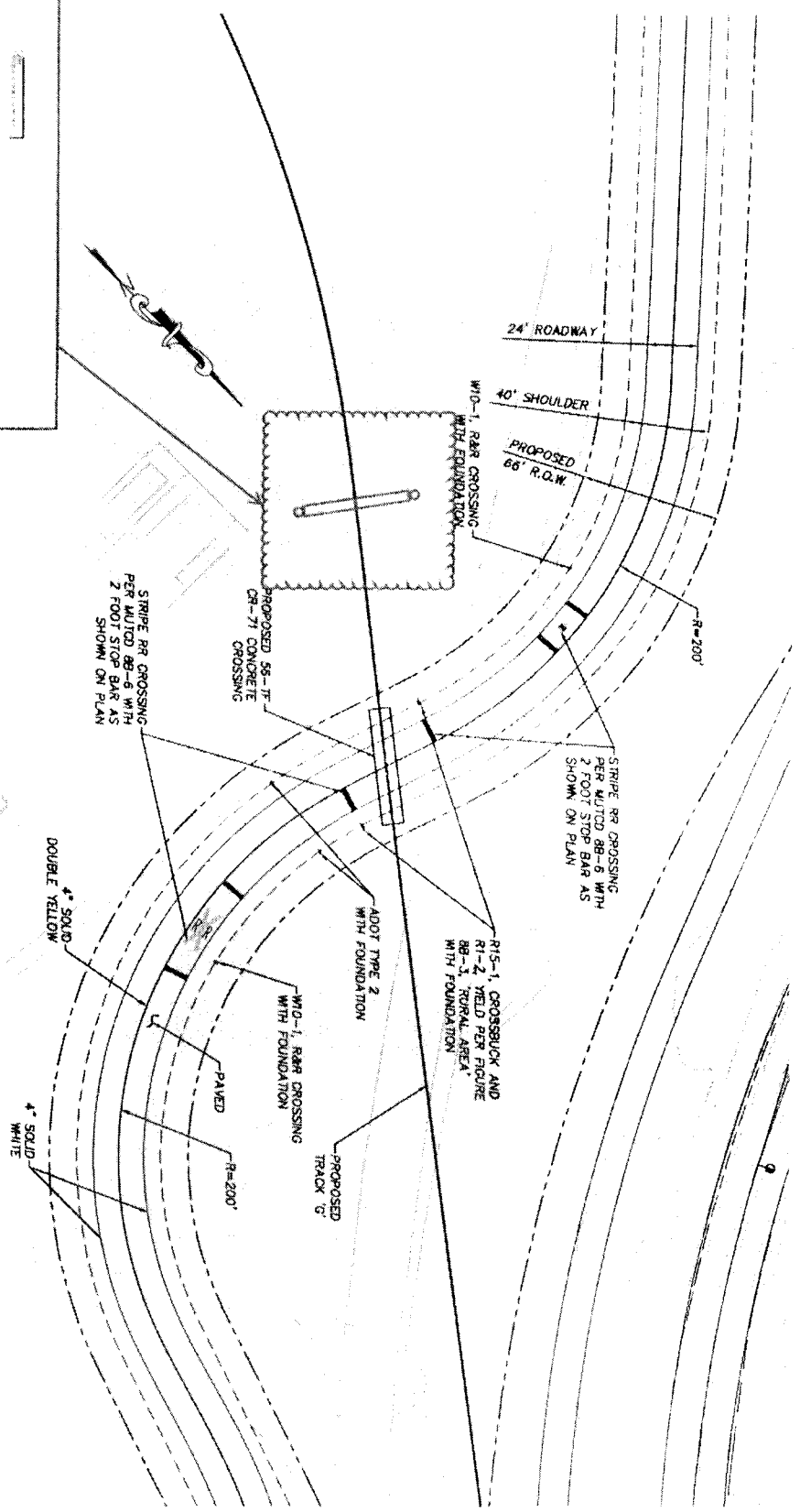
RELOCATION NORTHERN SANTA FE RAILWAY  
 MAINTENANCE DIVISION - LINE SEGMENT 7200  
 DRAKE, ARIZONA Co., AZ

MOUNTAIN ROAD & CIVIL  
 STATES CONTRACTING  
 1000 N. 10TH AVE., SUITE 100, DENVER, CO 80202

**R-6**

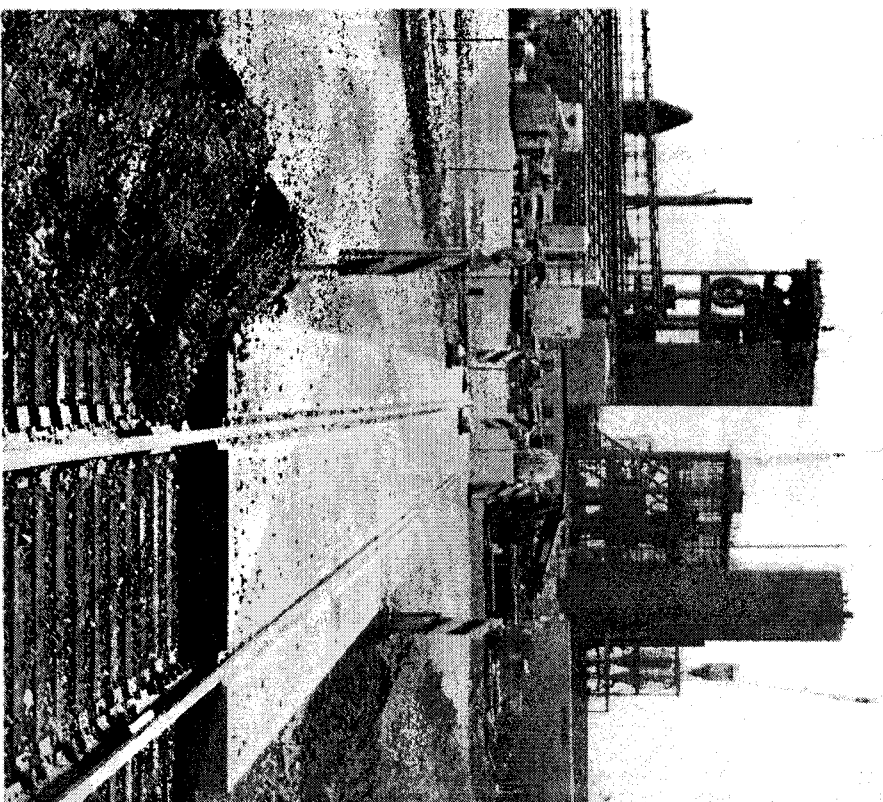
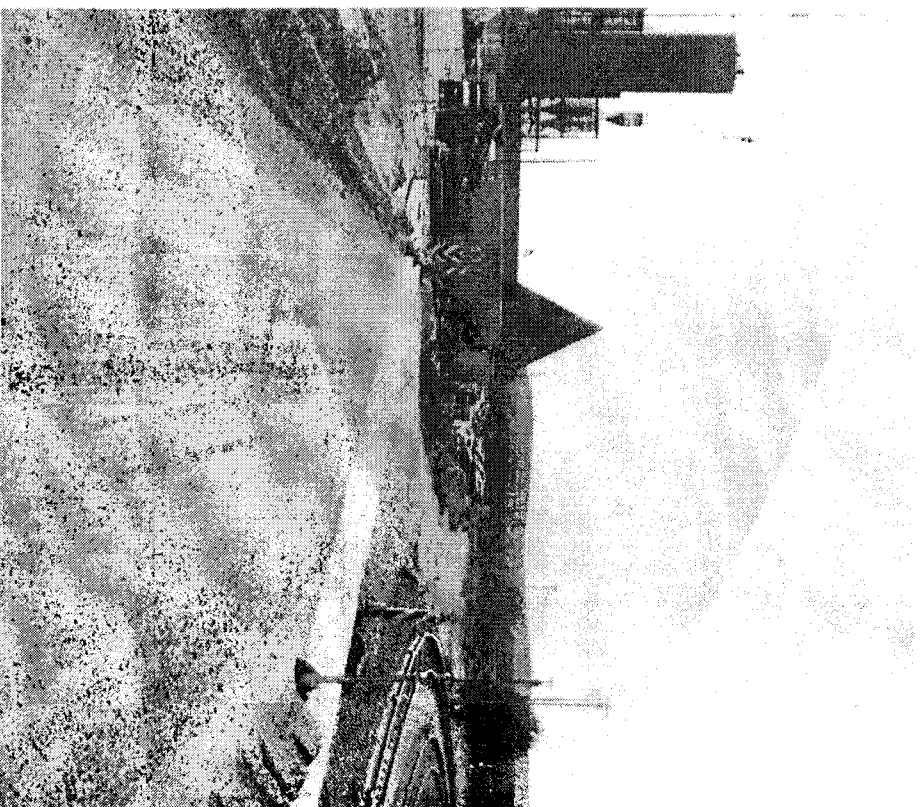


RTS-1 CROSSBUCK  
 RT-2 YIELD  
 W10-1 RAIL CROSSING



# **Exhibit E**

# New road crossing on CR71. Track is not in service.



COPIES of the foregoing mailed  
this 23rd day of June, 2010 to:

Docket No. RR-20736A-10-0140

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